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Early Modern Legal Poetics and Morality 1560-1625

Janis Jane Darvill Mills
Doctor of Philosophy
English Literature
University of Sussex
January 2011

WORK NOT SUBMITTED ELSEWHERE FOR EXAMINATION

I hereby declare that this thesis has not been and will not be, submitted in whole or in part to another University for the award of any other degree.

Signature.....

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UNIVERSITY OF SUSSEX

JANIS JANE DARVILL MILLS DOCTOR OF PHILOSOPHY

EARLY MODERN LEGAL POETICS AND MORALITY 1560-1625

SUMMARY

This thesis examines the reciprocity of literary and legal cultures, and seeks to enhance understanding of cultural and socio-legal constructions of morality in early modern England. Identifying the tensions in an institutional legality in which both secular pragmatism and moral idealism act as formulating principals, it interrogates the sense of disjuncture that arises between imaginative concepts of moral justice and their translation into the formal structures of law.

Chapter 1 investigates representations of rape in light of the legislative changes of the 1570s, and addresses the question of how literature shapes the legal imaginary of immorality. Literary models, notably Shakespeare's *The Rape Of Lucrece* (1594), and George Peele's *Tale of Troy* (1589), are examined together with the texts of Edward Coke and Thomas Edgar to argue that lawyers' mythopoeic interpretative strategies produce a form of legal fiction in relation to sexual crime.

These strategies are contextualised in Chapter 2 in relation to the education and literary-legal culture at the Inns of Court, and the thesis progresses to an examination of the inns' literary and dramatic output – notably that of Thomas Norton and Thomas Sackville's *Gorbuduc*, and Arthur Broke's contemporaneous revels' masque, *Desire and Lady Bewty* (1561-2) – to establish how the legal fraternity wielded significant authority over Tudor sexual politics, moral signification, and interpretative practices.

Chapters 3 and 4 explore legal and ethical challenges heralded by the Jacobean accession, particularly those posed by the Somerset scandal. Analysis of histories, letters, and court satire, together with Thomas Campion's *The Lord Hay's Masque* (1607), and George Chapman's *Andromeda Liberata* (1614) and *The Tragedy of Chabot* (1639), illuminates the period's textual negotiations of legal, political, and personal ethics, and offers a revealing picture of the moral paradoxes produced by the opacity of the parameters between the personal and political lives of the ruling elite.

Notes on the text and abbreviations

All the Shakespeare texts cited, and the dates of publication given, are from *The Norton Shakespeare*, ed. Stephen Greenblatt and others (London: W.W. Norton & Company Ltd, 1997).

The Early English Books online texts cited were all accessed through the University of Sussex Library Website. The Unique Resource Locator for all is identical, apart from the individual EEBO citation number, and for the sake of brevity I have simply cited this number in the footnotes. The full address is
http://gateway.proquest.com/expoxy.sussex.ac.uk/openurl?ctx-ver+Z39.88-203&res_id=xri:eebo&rft_id=xri:eebo:citation

I have retained the original spellings from primary texts as far as possible, including unmodified i/j and u/v spellings, with the exception of the long 's', and have expanded contractions where necessary.

Dates are given New Style (i.e. with each year assumed to begin on 1st January rather than 25th March.

All online journal articles cited were accessed through the University of Sussex Library website. I have cited the database on which they are held, the URL (unique resource locator) or DOI (digital object identifier), and the date accessed. If no URL is given, I have looked at the original file copies held in the University Library.

STC refers to the Short Title Catalogue

Wing refers to the Wing Catalogue

Translations are my own unless otherwise stated.

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Introduction

Early Modern Legal Poetics and Morality 1560-1625

As of a picture wrought to opticke reason...
And till you stand, and in a right line view it,
You cannot well judge what the maine form is.¹

These lines from George Chapman's *The Tragedie of Chabot* (c 1621) capture the way in which the socio-political effects of art were understood in the cultural imaginary of the seventeenth century. Pointing to the contingency of visual perception, the author describes an anamorphic picture – a self-referential art form presenting a visual puzzle that prompts the viewer to decode its meaning. The “picture wrought to opticke reason” thus self-consciously signals the multiple perspectives that it makes possible and the necessity for judicious interpretation on the part of the viewer. In this respect the picture stands as a metaphor for the play itself – a work that resonates with other late sixteenth- and seventeenth-century literary forms that present their political or moral messages with a similarly prudent ambiguity.

As Jonathan Dollimore has shown, the appropriation of literature in support of specific causes makes obvious an early modern awareness of art's powerful political effects and *The Tragedie of Chabot*, as a closet drama that explores the way in which

¹ George Chapman and James Shirley, *The Tragedy of Chabot Admirall of France : as it vvas presented by her Majesties Servants, at the private House in Drury Lane. Written by George Chapman, and Iames Shirly* (London: 1639) STC (2nd ed.) / 4996, 99843423 < <http://eebo.chadwyck.com> > [accessed 13th December 2010] (sig. B3r) Henry E. Huntington Library and Art Gallery. Further page references to this edition are given after quotations in the text.

the justice system defines, regulates, and conversely subverts moral orders, is amongst the works that suggest just this authorial awareness.² Re-written by James Shirley and resonant of the latter day civil war propaganda circulating around the time of its publication in 1639, the play examines legal and ethical controversies relating to the apparent inseparability of personal politics and state governance that were highly significant at the moment of the play's inception in 1621, while the subsequent appropriation of the work some twenty years later suggests its relevance to the ethical-political causes of a later age.

Chapman and Shirley's tragedy engages in a legal poetics that is particularly germane to the central proposition that shapes this study: that of the innate reciprocity between literary representation and early modern popular legal culture.³ This mutuality is demonstrated here by the play's particular emphasis on the reader/viewer's act of judicious analysis, of decoding, of evaluating and judging, which are activities, as Lorna Hutson makes clear, that are analogous both to the evaluation of evidence by lay witnesses and justices within the developing participatory justice system, and also to the audience's filtering of the various layers of meaning in early modern dramatic representation.⁴ Presenting an example of what is described by Subha Mukherji as the blending of the discursive and the affective, or the "human face" that drama lends to the rationale of law, this legal play also

² Jonathan Dollimore, "Introduction: Shakespeare, cultural materialism and the new historicism," in *Political Shakespeare: Essays in Cultural Materialism*, ed. by Jonathan Dollimore and Alan Sinfield, 2nd edn (Manchester: Manchester University Press, 1994), pp. 2-17.

³ For the purposes of this thesis 'legal poetics' denotes both the poetic elements of legal practice and also works of literature in which law is the subtext that orders meaning and interpretation. For a useful discussion of how this term has evolved from the discipline of aesthetics into broader contemporary usage see Shulamit Almog, "Creating Representations of Justice in the Third Millennium: Legal Poetics in Digital Times," *Rutgers Computer and Technology Law Journal*, 32.2 (2006), 183-245 in *Hein Online Law Library* <<http://www.heinonline.org.sussex.ac.uk>> [accessed 23/12/10] (pp.195-197).

⁴ Lorna Hutson, "Rethinking the Spectacle of the Scaffold: Juridical Epistemologies and English Revenge Tragedy," *Representations*, 89 (2005), 30-58 in *Jstore* <<http://www.jstor.org/stable/4490842>> [accessed 5/12/10] (p.33).

foregrounds key ideas and themes that have helped to develop this thesis: that of the importance of the connectivity of art and law in the conceptualisation of personal, political, and legal morality in the early modern legal and literary imagination; the seeming paradox of the law's simultaneous secular and spiritual status and its implication for societal notions of culpability; and that of the competing epistemological claims for truth and their potential impact on ideas of lawful authority, mercy, and justice.⁵

The suggestion that literature and law share an indissoluble relation, or in the words of Adam Geary, that they have forever “lived together, trespassed upon, and infiltrated each other,” finds particular expression in the humanist discourse of the sixteenth and seventeenth centuries.⁶ Early modern law appears to stand in a form of refracted relation to humanistic culture in that the discourse of law is continually deflected onto that of art and *vice versa*. Addressing the question of how literature mediates in the formulation of law as a social discourse, this study attempts to disentangle some of the textual strands that help construct ‘morality’ in the cultural imaginary of early modern England during a vibrant period of political and legal transformation from the 1560s to the early 1620s.

The years following the Reformation saw important changes relating to the jurisdiction of moral authority as the secular common law gradually grew in status and steadily absorbed some of the traditional powers of the canon law process.⁷ From

⁵ Subha Mukerji, introduction to *Law and Representation in Early Modern Drama* (Cambridge: Cambridge University Press, 2006), p.8. In couching the imaginative bias for my investigation I follow Bradin Cormack's taxonomy in his recent work in English law and literature studies, which examines the cultural meanings forged by the intersection of the early modern literary and legal imaginations. See Bradin Cormack, prologue to *A Power to Do Justice: Jurisdiction, English literature, and the Rise of the Common Law, 1509-1625* (Chicago: University of Chicago Press, 2007), p.1.

⁶ Patrick Hanafin, Adam Geary, Joseph Brooker, “Introduction: On Writing: Law and Literature,” *Journal of Law and Society*, 31.1 (2004) in *JStore* < <http://www.jstor.org/stable/1410439> [accessed 10/12/10] (pp.1-2).

⁷ A particularly useful discussion of the early modern legal reformation of spiritual and temporal jurisdiction can be found in Lorna Hutson's chapter “From Penitence to Evidence,” in Lorna Hutson,

the mid sixteenth-century the growing hegemonic stature of the secular law, and its ongoing reformulation of restitution in temporal rather than spiritual terms, coincided with an unprecedented expansion of the common law legal community and also with the production of an extraordinarily prolific and profoundly politicised literature. Issues of sexual propriety, legal integrity, and moral governance, which retained quasi-religious status as matters of spiritual import, taxed the parameters of secular law and were subject to public scrutiny via a vigorous literary culture – a culture in which the common law’s identity as moral arbiter was frequently depicted as in tension with its secular function as the mediator of worldly disputes.

Alternative views of law’s place as the rightful regulator of conscience and morality were supported by the Protestant cultural imperative. As Lorna Hutson has shown, Richard Bernard’s *The Isle of Man: Legall Proceedings in Man-shire against SIN* (1627) allegorises the common law procedure of hue and cry, arrest, and pre-trial examination as a precise analogue of the Protestant ethic of conscience, self-examination, and repentance, and thus claims spiritual and moral authority for the secular law that was once the preserve of canon law and the Church.⁸ The panegyrics to the participatory justice system, of which there are numerous examples, may be compared to dramatic representations of legal process (of which *The Tragedie of Chabot* is one instance), which together suggest the real dichotomy that ensued from the blurring of the boundaries of ‘crime’ and ‘sin’ for the purposes of law. Morality and law maintained a complex relation in this period, and the overlap of moral and legal rules that resulted from the law’s uneasy alliance of worldly pragmatics and

The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama (Oxford: Oxford University Press, 2007), pp. 12-63.

⁸ See Hutson, *The Invention of Suspicion*, pp.43-45, citing Richard Bernard, *The Isle of Man: Legal Proceeding in Man-shire against SIN, Wherein, by way of a continued allegory, the chief Malefactors disturbing both Church and Commonwealth, are Detected and Attached; with their Arraignment and Judicial Trial, according to the Laws of England* (London, 1659).

spirituality was responsible for a degree of confusion, particularly in relation to sexual crime, as we shall see.

While the current study develops several observations in relation to political, legal, and moral signification, it develops two central assertions. The first is in terms of an historical interrelation of law and literature, which I argue resonates in the archaisms and theatrical forms of some law courts today and has its beginnings as a relation pertinent to the modern context in the formative cultural practices of the early modern Inns of Court. My second claim is in relation to the connection between ethics and law in the early modern cultural imaginary, which I argue is complicated by the inconsistencies in the law's co-opted secular and spiritual status, and which I suggest is further complicated by the moral paradoxes produced by the fluidity of parameters between the personal and political lives and interests of the early modern ruling class. The sense of hiatus or disjuncture between the early modern cultural imaginary of natural law and moral justice on the one hand, and contemporary institutional legality on the other, a gap that is in the words of Subha Mukherji, "fleshed out" by drama, underpins the structure of the thesis as a unifying theme.⁹

Literature, Law, and Cultural History

Although the concept of literature's premier role in shaping the cultural order is a familiar one in literary studies, it is perhaps pertinent to discuss some of the theoretical questions that arise in relation to this claim, and also to examine how law may figure within such a project. An initial question must be of the relevance of such an investigation. Claims that in the current academic arena the study of arts and

⁹ Mukherji, *Law and Representation in Early Modern Drama*, p.25.

humanities is suffering a loss of prestige in favour of a more economically biased, and business driven curriculum suggest a developing concept of the peripheral importance of such study to modern life. Nevertheless, the distinctive appeals by the law to the past continue to order modern legal and social ideologies making a close examination of the law's cultural history decisively relevant. Analyses of historical contexts remind us of the contingent, contextual nature of our contemporary ideological pretexts and help us to develop new understandings of the unique moral and political horizons of our own age. As Austin Sarat rightly claims, remembrance is the territory in which "social conflict plays itself out," and in this remembrance "law uses history to tell us who we are," or rather perhaps, law uses history to tell us who we believe ourselves to be.¹⁰

Whether pertaining to the study of historical jurisdictional contexts, or to literature's many engagements with law and the hermeneutics of current interdisciplinary practice, studies of the interrelation of literature and the law inevitably raise questions of form. Such questions of definition are marked by controversy. Indeed, the real or implied categorisation of 'law' and of 'literature' as representative of discrete forms of expression, or as presenting distinct pedagogical and disciplinary boundaries, is in itself the subject of some contention. Legal theorists suggest that the elements or "question" of law as modelled around "substance, formalism, transparency, *mimesis*, and *logos*," and that of literature as modelled around "rhetoric, style, decoration, poesis, and pathos" represent the principal coordinates of the discourse on literature's relation to law.¹¹ This notion of

¹⁰ Austin Sarat, editorial, *Law, Culture and the Humanities*, 5.1 (2009), in *Sage Premier 2010* <<http://lch.sagepub.com.ezproxy.sussex.ac.uk/>> <doi: 10.1177/1743872108096859> [accessed 5/12/10] (pp.1-2).

¹¹ See Nina Philadelphoff-Puren and Peter Rush, "Fatal (F)laws: Law Literature and Writing," *Law and Critique*, 14.2 (2003), 191-211 in *Springer Standard Collection* <<http://www.springerlink.com.ezproxy.sussex.ac.uk/>> < doi: 10.1023/A:1024799619365> [accessed

parallelism or of analogy presents a vexed question however, in terms of precisely how literature and law can be seen to intersect, or overlap, not only in relation to the real world of the court, but also with regard to the kind of theoretical frameworks appropriate for examining the historical context. Before turning to the way in which scholars have approached the latter, it is useful first briefly to examine this question in light of the development of law and literature studies, and also to investigate how literary culture functions in relation to existing enactments of law in the contemporary setting.

Contemporary Questions of Literature and Law

Despite a wide variety of approaches to the practices of literary and legal interdisciplinarity, one clear fact emerges as a result of the scholarly attention given to the subject in recent decades: literature is an intrinsic facet of law's genus and thus begs the question of the textuality of law, of law's fictional elements that pertain to literary culture, and their relation to the historical, scholastic, ethical, and practical aspects of the law and legal practice.¹² But what precisely do we understand when speaking of 'literature,' in all its imaginative and textual connotation, as in some way connected to 'law,' and what relevance does this connection have for cultural understanding of either past or present? Practicing lawyers and judges provide various answers to this question only obscurely in their professional judgements, but do so with more clarity in their recommendations that the study of literature be intrinsically linked to that of law. During the past thirty or so years in which law and

11/12/10] (p.195). Puren and Rush acknowledge James Boyd White as establishing the disciplines in this analogical relation. See J. Boyd White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Boston: Little, Brown & Co, 1973).

¹² Puren and Rush, "Fatal (F)laws," p.193. Puren and Rush, among others, identify literature as part of the genre of law.

literature studies have emerged as an interdisciplinary sub-field however, these recommendations, and thus the answers to the ‘how’ and ‘why’ of the law and literature debate, have undergone considerable re-evaluation.

Traditional justifications for the study of what is characterized as “law *as* literature,” and “law *in* literature” range from the desire to augment legal studies with an added dimension of social and philosophical awareness, to that of exposing the overarching political context of law.¹³ An oft-quoted figure in the debate, Judge Richard Posner cites literature as the means to produce reflection on the ethical issues that are of supreme importance to jurisprudence. As Posner asserts: “[t]he choices between rules and standards, between law and equity, between strict liability and liability based on culpability, and between ‘a government of laws’ and ‘a government of men’” are fundamental questions that literature explores.¹⁴ Several other legal theorists have suggested that literature provides an opportunity to look beyond a concept of law as the technical application of a rule system to the broader ethical issues of law and community.¹⁵ Primarily focussed towards the issue of law’s morality, or in the words of Peter Goodrich, “the question of justice, the image of the good that law borrows, reformulates, and sells,” modern theories of the interdisciplinarity of literature and law have – albeit with huge variation – frequently characterised literature as a form of ethical codicil to law.¹⁶

While this concept has been a cornerstone of literature and law studies, the problem of demonstrating a structured theoretical basis for its terms is complex, as

¹³ Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995), p.3.

¹⁴ Richard A. Posner, *Law and Literature: A Misunderstood Relation* (Cambridge Massachusetts: Harvard University Press, 1988), p.16.

¹⁵ Ward, *Law and Literature*, p.23. In broad terms this concept was variously developed as an axiom of the Critical Legal Studies movement.

¹⁶ Peter Goodrich, “Screening Law,” *Law and Literature*, 21.1 (2009), 1-23 in *Literature Online* <http://lion.chadwyck.co.uk.ezproxy.sussex.ac.uk/> > [accessed 23rd December 2010] (p. 3).

much recent scholarship has shown. The drive to balance the abstractions and rationalities of law with the humanising and ethical force of literature, a close attention to the persuasive qualities of narrative, and the application of literary hermeneutics in the analysis of legal texts are all ways with which scholars have sought to temper a technocratic, rule based concept of law with a more humanised alternative.¹⁷ A recognizable lack of theoretical uniformity in applying these ideas is correctly attributed to the multiple approaches to reading literature itself, and although it is this diversity that drives literary culture, this has led to scholarly claims for literature that are questionable and, it is claimed, that fail to provide a convincingly theorised notion of literature and law's interrelation.¹⁸ Interpretations of narrative literature as representative of a singular objective reality for example, or assertions that literature replicates in exact terms the real lived experience of historical individuals, are misleading. As Julie Stone Peters lucidly asks: how do we conceive of "stories" as in some way 'real,' "as if narrative was ever free from the coercions of generic convention, the feints of rhetoric, its own multiplicity and contradictoriness?"¹⁹

Whereas the issue of how far literature can be seen as a direct reflection of life is one strand of theoretical enquiry within the law and literature debate that produces divergent responses, the problems of language, or the theoretical formulation (most often associated with the Critical Studies Movement of the 1990's) of 'law as

¹⁷ Julie Stone Peters, "Law Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," *Publications of the Modern language Association of America*, 120.1 (2005), 442-453 in *Miscellaneous Ejournals* <<http://www.mlajournals.org.ezproxy.sussex.ac.uk> <doi:10.1632/003081205X52383> (pp.444-448). Peters identifies the three major strands of law and literature studies in this taxonomy in which she follows Jane Baron. See Jane B. Baron, "Law, Literature, and the Problems of Interdisciplinarity," *The Yale Law Journal*, 108.5 (1999), 1059-1085 in *Hein Online Law Journal Library* <http://www.heinonline.org.ezproxy.sussex.ac.uk> [accessed 23rd December, 2010] (pp.1063-66).

¹⁸ Baron, "law, Literature, and the Problems of Interdisciplinarity," pp.1070, 1071. I have found both this, and Peters insightful work particularly useful in terms of their analyses of the theoretical development of law and literature studies.

¹⁹ Peters, "Law, Literature and the Vanishing Real," p. 443.

literature' in which methodologies of literary theory are applied to legal writing, has proved to be equally controversial. So, for example, while Richard Posner's intentionalist stance allows for literature's importance in legal studies, he nevertheless remains cautious regarding the application of plural literary/theoretical interpretations to legal texts.²⁰ Posner's concern is that the clear intentions and objectives of legislators do not become obscured. Identifying the crucial difference between legal and literary scholarship as legal scholarship's drive to establish uniformity in law, and literary scholarship's project of establishing a diversity of possible meanings, Posner questions the validity of 'reading' literary and legal texts in the same way, or of reading law as literature. The contention here is that the regulation of individual judicial and official authority and the prevention of idiosyncratic legal judgement rely on the singularly authoritative nature of the legal text. From this perspective, the practice of law needs the uncomplicated authority of language in its function as a coercive force. As Posner rightly attests, law is coercive not persuasive.²¹ But is it possible to make any such claim for the authority of language either literary or legal? The nature of language dictates that legal discourse cannot be understood as a discrete rational system consisting of references that correspond to a set of objective realities, as Elizabeth Perry Hodges makes clear, but only as an active product of multifaceted historical, societal and individual forces, forces to which literature contributes.²²

Furthermore, can it be that "literature – especially great literature – deals with the permanent and general aspects of human nature and institutions," as Posner

²⁰ Posner, *Law and Literature*, pp. 13, 249.

²¹ Posner, *Law and Literature*, p. 249. For a discussion of how traditional legal positivism acknowledges the coercive nature of sovereign power see Costas Douzinas and Adam Geary, *Critical Jurisprudence: the Political Philosophy of Justice* (Oxford: Hart Publishing, 2005), p.9.

²² Elizabeth Perry Hodges, "Writing in a Different Voice *Colloquy: Human Voice in Legal Discourse*," *Texas Law Review*, 66 (1987-1998), 629-640 in *Hein Online Law Journal Library* <http://www.heinonline.org.ezproxy.sussex.ac.uk> [accessed 23rd December 2010] (p.633), cited in Ward, *Law and Literature*, p.26.

maintains? Can we rely then on a notion of universal truth, and if so, how do we account for the historicity of texts and the contingencies between language, meaning and context?²³ Here Posner's particular concept of literature tends to lend narrative the properties of *mimesis* or reflection of 'reality,' a concept that resists the observations made by Peters and others of narrative's multiplicity and inconsistency. It may be argued that Posner's 'scientific' or positivist approach to law does not seem to fully acknowledge the contingencies of legal and literary language or their effects, or to account for the complications that narrative, as a form of fiction, may pose to law's formal principals.

Although the notion of 'fiction' in relation to 'law' may seem to be a paradoxical construct, we shall see that whilst 'formalism,' 'transparency' and '*logos*' are deemed crucial to law, forms of fiction making are intrinsic to law's practice. Certainly, lawyers do routinely acknowledge a theoretical form of legal fiction, which is traditionally defined as the practice of assimilating events or facts known to be fictional into jurisprudential interpretation. Frequently this custom is deemed to be an innocuous commonplace.²⁴ Nonetheless, Jeremy Bentham's declaration – "[f]iction of use to justice? Exactly as swindling is to trade" – demonstrates an historical concern with what has more recently been interpreted as "the persistence of the technique of make believe" within common law thought.²⁵ Characterised as a form of legal 'story telling,' as a legal metaphor rather than a lie, a legal fiction is one that allows states, conditions, or accounts of fictitious events known not to have taken

²³ Posner, *Law and Literature*, p.15.

²⁴ Eben Moglen, "Legal Fictions and the Common Law legal theory: Some Historical Reflections," *10 Tel-Aviv Univ. Stud. in L.*, 35 (1991) <<http://emoglen.law.columbia.edu/publications/fict.html> > [accessed 23/12/10] (at 2.A. para. 1 of 6). Moglen cites *The Bill of Middlesex* in which the original subject matter was a fictitious trespass, arrest, and bail at the Kings Bench. See also Posner, who cites *Melvin v. Reid*. 112 Cal. App. 285, 297 Pac.91 (1931) as a leading case in privacy law that is based on fictitious events and used as precedent. See Posner, *Law and Literature*, pp. 5-6.

²⁵ See Moglen, "Legal fictions," Moglen cites Jeremy Bentham, *Works* 283 (Bowring ed. 1843), (at 2. para.1)

place to be presumed as actual conditions or incidents for the purposes of illustration or example.²⁶ In the historical context, as we shall see, the classic rape narratives of Helen and Lucrece are inadvertently legal fictions in that they are deemed to represent the real situations of real women. In this respect, literary and legal fiction share an obvious relationship as forms of narrative. Both are powerful markers of cultural mores inscribed both consciously in the text, and also in the subtext of silences and omissions that conceal the covert commonplaces of societal conventions. It will become evident that this form of legal fiction is not innocuous, or perhaps “a pointless circumlocution” as Richard Posner has suggested, but sometimes rather an example of legal assertions regarding the ‘facts’ of human action – assertions that are inherently political in the sense that they both construct and perpetrate cultural concepts of societal norms. On the opposing side of the law/literature debate presenting a political critique of current legal systems, Robin West numbers among the critics of Posner’s positivist concept of law and promotes the use of inter-textual study as a means of effecting what Ian Ward describes as a “radical critique of power.”²⁷ Many legal scholars who, like West, are concerned with the political morality of legal practice, express concern that a perception of law as apolitical, as a rational arrangement of rules administered by individuals who are somehow outside the political sphere, obscures the true nature of legal discourse. To be sure, the dominant ideology within society can be seen as manifest in the legal system it promotes.²⁸ As Alan Norrie explains: “judges are not simply the neutral occupants of a value-free role, they form

²⁶ Ward, *Law and Literature*, p.6. Ward attributes this concept of legal narrative as ‘story telling’ to Paul Ricoeur. For an account of legal fiction as metaphor see Kim Lane Scheppele, “Facing Facts in Legal Interpretation,” *Representations*, 30 (1990), 42-77 in *Jstore* <<http://www.jstor.org/stable/2928446>> [accessed 23rd December 2010] (p.64). Scheppele investigates the metaphoric term of civil death and its implications as legal fiction.

²⁷ Posner, *Law and literature*, p.6. Robin West, *Narrative, Authority, and Law* (Michigan: University of Michigan Press, 1993), pp. 96, 174,175. Cited in Ward, *Law and Literature*, pp. 8-11.

²⁸ Costas Douzinas and Adam Geary, *Critical Jurisprudence*, p. 8.

part of a socio-political elite...[t]hey are, as one judge put it, ‘at least as much concerned as the executive with law and order’ (Lord Devlin quoted in Griffiths, 1985) and this concern runs counter to the values of political individualism within doctrine.”²⁹ Richard Posner, however, perceives claims of the quintessentially political character of legal practice as an exaggeration; an overstatement that he asserts is particularly reflected in the work of West and others, who “borrow the prestige of great literature for political, ideological, or ethical ends to which the literature is not germane.”³⁰ We shall see, however, that this statement is in fact equally applicable to legal judgements, which often reveal individual political perspective through interpretations of crime in terms of a distinct ideological understanding, and while so doing also appeal to specific literary/linguistic authority.

What is clear is that the law’s relation to literature is both political and multifaceted, and I suggest that a further definition of literature *in* law is apposite to denote the complexity of law’s fictions and their relation to language and interpretation.³¹ Robert Cover interprets the connection between legal thinking and the imagination by explaining law as “a bridge linking a concept of reality to an imagined alternative – that is, a connective between two states of affairs, both of which can be represented in their normative significance only through the devices of narrative.”³² On the subject of these imaginative constructs, Lee Anne Fennell

²⁹ Alan Norrie, “Criminal Law” in *The Critical Lawyers’ Handbook Vol.1*, ed. by Ian Grigg-Spall and Paddy Ireland <http://www.nclg.org.uk/book1/2_6.htm> [accessed 23/12/10] (2. para 2 of 15).

³⁰ Posner, *Law and Literature*, p.16. Posner here cites the methodology of Richard Weisberg and that of Robin West whom he associates with the deconstructionist school of the Critical Legal Studies movement.

³¹ This categorisation has also recently been adopted in response to Ian Ward’s taxonomy by Subha Mukherji in *Law and Representation in Early Modern Drama*, p.16, published during the writing of this thesis. Mukherji’s interpretation is somewhat different from my own, however, as she refers to the practice of using literary texts to reconstruct aspects of the experience of law when legal documentation is lacking, whereas I am interested here in the practical use of literature in the shaping of legal concepts.

³² Robert M. Cover, “Violence and the Word,” *Yale Law Journal* 95.8 (1986), 1601-1630 in *Hein Online Law Journal Library* <http://www.heinonline.org.ezproxy.sussex.ac.uk> [accessed 23rd December,

emphasises that “we have a tremendous interest in making sure that when the law uses its imagination, as it must, it is getting it basically right.” As Fennell asserts:

“[b]ecause the law carries coercive force, backed by threats of state sponsored violence, its fictional enterprises are deadly serious.”³³ It is evident that fiction, so defined, can be seen to operate in a complex manner within the discourse of law, but the pertinent questions are the ones of legal realism – what do we discern to be fictions within the practice of law? What relation do they bear to literature? And what do we perceive to be their effects? Some answers to these questions can perhaps best be illustrated by examining how the interrelations of literary culture and the law appear to operate within the setting of the modern law court, and in the following analysis I attempt to outline a practical response both to these questions, and also to the question initially raised at the beginning of this discussion as to the nature and relevance of the connectivity between literature and the law.

Literature *in* Law: Legal Fiction and Literary Culture

Some legal fictions are obvious but can almost escape our notice. The traditional legal process of deeming ‘a’ to be in some respects enough like ‘b’ to warrant similar treatment – for example as in the fiction of ‘corporation as person’ which afforded business corporations almost the same contractual rights as individuals – produces an analogy which, although legitimate, partially obscures the fact that ‘a’ is not ‘b.’³⁴

While acknowledging businesses to be in some way like real persons merely afforded misplaced advantages to corporations, a somewhat different practice of fictional

2010] (p.1601), cited in Lee Ann Fennell, “Scarcity of Choice in Law and Literature,” in [www.legaleessays.com](http://people.virginia.edu/~dl12k/fennell2.pdf), (2000) < <http://people.virginia.edu/~dl12k/fennell2.pdf> > [accessed 23/12/10] (pp. 4-5).

³³ Fennell, “Scarcity of Choice in Law and Literature,” pp 4-5.

³⁴ Eben Moglen, “Legal Fictions and Common Law Legal Theory,” (B. para. 5 of 10).

analogy within criminal prosecutions has potentially graver effects. An example of this and a cogent demonstration of what I describe as literature *in* law can be recovered from Nina Philadelphoff-Puren and Peter Rush's analysis of a criminal case heard in Victoria's Supreme court in 2000. This report of the criminal prosecution bears witness to literature as the matrix from which concepts of justice emerge – concepts in this instance that are central to the presiding judge's perceptions of morality, intention, and culpability.³⁵

Attracting a considerable amount of controversy during the court hearings, the case relates to a fatal assault that took place after an Australian Football League Anzac Day match in Melbourne in 1999. The supposed catalyst for the attack was the alleged rape of a young woman. Handing down suspended sentences to the two men who had summarily avenged the suspected crime by brutally killing an innocent homosexual man, the judge, who appears to have closely followed the lead of the defending counsel, summed up the case in the dramatic terms of Shakespearean tragedy. Conceptualising the defendants' actions as prompted by a series of catastrophic misconceptions and quoting from Shakespeare's *Julius Caesar*, the judge, Cummins J, conceded that the accused were responsible for the death of the victim, Keith Hibbins, but under mitigating circumstances. The judicial appeal to literary authority acts to support a description of the case as one in which the defendants are caught up in an "unfolding tragedy" of events. Cummings J declared: "Men at some time are masters of their fates; the fault dear Brutus, is not in our stars, but in ourselves (1.2.141-142)." His subsequent statement – "But you and the victims

³⁵ Puren and Rush, "Fatal (F)laws," pp. 191-211. My insights in the following discussion are a reflection of those within Puren and Rush's analysis, which provides a full account of the case. Application for Bail by John Whiteside [1999] 413 (6 October 1999); *R v. Whiteside and Dieber* [2000] VSC 260 (23 June 2000) cited as VSC; *Director of Public Prosecutions v. Whiteside and Dieber* (2000) 1 VR 331 (CCA) cited as CCA; *Dieber and Whiteside v. Director of Public Prosecutions*, High Court of Australia, M89/2000 (22 June 2001) cited as HCA.

were under a malevolent star that Anzac night” – continues in a style of Shakespearean prose and mitigates the reference to human agency by way of allusion to the mystical forces of fate. The judge’s rhetorical formulations thus position the individuals in the case within a similar context to the ‘fateful’ monumental events on which he plays.³⁶

In this instance Shakespeare’s canonical play provides a reference, a form of cultural cipher that works to position the legal narrative within a distinct generic frame. Operating within a predominantly masculine world and set in the classical public arena of male civic responsibility, *Julius Caesar* examines male codes of conduct in relation to motive, intention, and dedication to principal and provides a critical subtext for the judicial findings. In mitigating the sentences of the accused, Cummins J attests that the intention of the defendants was “to ensure that the law was not impotent and that yet another violator of women did not escape.”³⁷ Crucially, while *Julius Caesar* dramatises the tensions between different purposes and ideals it also frames the question as to whether extralegal brutality is permissible in order to defend the rules of law against corruption.³⁸ In framing the intention of the accused as that of enacting just such an extralegal form of justice, the judge not only associates the defendants’ actions with a proper, if tragically mistaken concern with the upholding of law, but also appeals to, and capitalises upon the common perception of the law’s failure in relation to the adequate deterrence and punishment of rape.

³⁶ *R v. Whiteside and Dieber* [2000] VSC para 29 in Puren and Rush, “Fatal (F)laws, p.193. Here line references are from *Julius Caesar*, in *The Norton Shakespeare*, ed., Stephen Greenblatt et al, (New York: Norton, 1977) pp.1533-1587.

³⁷ *R v. Whiteside and Dieber* [2000] VSC para 7 in Puren and Rush, “Fatal (F)laws,” p.199.

³⁸ Katherine Eisaman Maus, introduction to *Julius Caesar*, in *The Norton Shakespeare*, pp. 1525-1532 (p.1526). As Maus suggests, *Julius Caesar* poses the question as to whether “citizens are allowed, or even obliged, to defend the rule of law against...an individual by resorting to extralegal violence.” Maus’s observation seems particularly germane to the judge’s perspective on events in this case.

Indeed, it is the emotive subject of rape that becomes the key issue in Cummins J's apparent valorisation of the defendants' avenging actions, which he re-inscribes in the mode of a male chivalric code and in so doing reconvenes the tragedy not as the death of the victim but as the tragic misapprehensions of the accused.³⁹ The version of events described by Cummins J resonates with the generic dramatic and psychological paradigm of epic rape narrative in several ways. In literary fiction female rape is frequently the precursor of a wider tragedy than that solely of the victim and proves instead to be the catalyst for catastrophic disorder. We only have to look to the classic narratives of Lucrece's violation, Lavina's tragic destruction, or to Helen's ill-fated abduction to Troy to find canonical examples, and the way in which these stories are appropriated, for instance to trope the atrocities of the English Civil War in the case of Lucrece's story, demonstrates the power that rape narrative has traditionally wielded as part of the cultural currency. In the criminal prosecution in question, the judgement as narrative positions rape as the inception of the wider "unfolding tragedy" conceptualised by the judge:

Yours was the conduct of two young men of good character
not looking for trouble, not looking for a fight, not bent on violence;
who truly and reasonably believed a woman who had been raped
and without reflection or premeditation sought to ensure the
perpetrators did not escape before the summoned police arrived.⁴⁰

Rape classically troped is an event in which the principal issue is that of male honour: the code of virtuous male conduct sanctions the forcible rescue of a potential victim, or the avenging of the crime of rape with violent means.⁴¹ Here the invocation of the rape story dwells on the purpose of the defendants.

³⁹ Puren and Rush, "Fatal (F)laws," p. 210.

⁴⁰ *R v. Whiteside and Dieber* [2000] VSC para 29. Quoted from judge's comments. See Puren and Rush, "Fatal (F)laws," p.193.

⁴¹ Barbara, J. Baines, "Effacing Rape in Early Modern Representation," *English Literary History* 65.1 (1998), 69-98 in *JStore* < <http://www.jstor.org/stable/30030170> > (p.70)

In the words of the judge, the objective of the accused - “to ensure that the law was not impotent and yet another violator of women did not escape” – becomes crucial to the suspension of sentence. In the judicial interpretation of events the fundamental question of intent (*mens rea*) is framed within the context of the accused men’s honourable purpose, a purpose that coheres with a chivalric code of heterosexual relations in which female vulnerability necessitates forceful male action.⁴² The chivalric code appeals to the “mass psychology” of male virility (“machismo”) and denotes a ‘norm’ of heroic male behaviour.⁴³ Working within this norm, the more subtle effect of Cummins J’s appeal to the classical heterosexual code of heroic action is that the homosexual, feminised male victim in the case appears as ‘other,’ and is thus excluded as a participant within it.

Puren and Rush pose the question as to whether the judgment of Cummins J is a judgement of law or a judgement of literature.⁴⁴ Rather than the ethical addendum to law envisaged by some literary/legal theorists, literature here operates instead as a disruptive adjunct to the legal process in that it works to produce a narrative in which there are crucial gaps and silences. Undisclosed in the judgement and suppressed in the judge’s interpretation of events is the evidence that the defendants had been drinking heavily before the assault. Also unelaborated upon are the facts that the accused had no means of identifying the perpetrator(s) of the alleged rape; that witnesses had testified to the fact that the victim was “obviously” gay; and that violent assault of homosexual men by young heterosexuals was widespread at the time. The judgement refers to the accused “briefly assaulting” the victim, an assessment that

⁴² Puren and Rush, “Fatal (F)laws,” p. 205.

⁴³ Roy Porter, “Rape, – Does it have a Historical Meaning?” in *Rape* ed. by Sylvana Tomaselli and Roy Porter (Oxford: Blackwell, 1986), pp. 216-223 (p. 216). Porter identifies Susan Brownmiller’s concept of male virility as part of a mass psychology: Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: 1975), heading to Chapter 1.

⁴⁴ Puren and Rush, “Fatal (F)laws,” p. 192.

was not borne out by an eyewitness of the crime, who described the unmitigated savagery of the attack.⁴⁵ In the part of the judgement that concentrates on the misapprehensions of the accused men, the judge reminds the defendants of “the rare and perverse confluence of events which channelled you towards this tragedy.” The young woman who alleged the rape later retracted her claim, and it appears that the accused had failed to recognize her as a ‘true’ victim. The judge identifies the woman’s “false cry of rape” and the defendants “decent belief in its truth” as the initial events that bear the accused towards crisis.⁴⁶

Although elsewhere Cummins J states that the alleged rape victim should not in any way be blamed for the actions that followed, his construction of the defendants’ intent as honourable appears to scapegoat the alleged victim in the identification of her “unfortunate cry” as the catalyst for the resulting tragedy.⁴⁷ The (apparently) false assertion of rape that moves the accused to a “decent belief” converts the perpetrators of aggression to victims of female duplicity. In this, the judgement elevates what appear to be the brutal ironies of the case – that the accused picked on a homosexual man to randomly avenge an ‘erroneous’ allegation of rape – to the status of tragic corruption of honourable intention, and buoys it with literary authority. The tragedy thus becomes not the death of the victim, but the malevolence of fate.⁴⁸ Puren and Rush’s illumination of this case demonstrates how a legal reconstruction of the death of the victim, Keith Hibbins, is construed to reassemble the generic properties of dramatic tragedy and rape narrative in enough respects to warrant a suspension of

⁴⁵ *R v. Whiteside and Dieber* [2000] CCA 334, para10; see also HCA, 2, Puren and Rush, “Fatal (F)laws,” p. 200.

⁴⁶ *R v. Whiteside and Dieber* [2000] VSC para 29, Puren and Rush, “Fatal (F)laws, p.193.

⁴⁷ *R v. Whiteside and Dieber* [2000] VSC paras 2-3, Puren and Rush, “Fatal (F)laws, p. 207.

⁴⁸ The Criminal Appeal Court disagreed. Brooking JA asserted that the defence counsel had erroneously presented the case as “the final and inevitable event in a foreordained tragedy of errors for which no-one need take full responsibility.” *Whiteside and Dieber* [2000] CCA at 342, para 38. The sentences were increased to six years. Puren and Rush, “Fatal (F)laws,” pp. 192-194.

sentence. In this, the interpretative strategies used by the defence counsel and the judge work to formulate what can be characterised as a form of legal fiction. Equally attributable to the formulation of the judgement are alternative concepts of fiction – linguistic, ideological, and contextual. It is apparent that the judicial interpretation of events and the question of culpability of the accused rest heavily on a subjective cultural understanding of sexual ideologies, which the Court of Appeal duly challenged.

In terms of the disputes surrounding how we might theorise the interdisciplinarity of literature and law, it is clear from the details of this case that the borrowing of prestigious literary texts “for political, ideological, or ethical ends to which the literature is not germane” is not simply the preserve of legal/literary theorists as Richard Posner suggests, but operates within the courtroom with subtle effect.⁴⁹ Likewise, a supposition that legal language, or the grammar of law, is somehow beyond the slipperiness of all language is clearly wrong. As James Boyd White suggests, the principle power of law lies in its language: “in the coercive aspect of its rhetoric – in the way it structures sensibility and vision.”⁵⁰ One of the most disturbing aspects in the juridical exposition of Keith Hibbins’ death in this respect, and one that Puren and Rush illuminate to effect, is the judge’s grammatical construction to describe the fatal assault on the victim. He does so not in relation to the physical active agency of the accused in bringing death, but, instead, in terms of the victim’s body “forcibly striking ... [a] parked car in the assault” thus ameliorating the effect of a direct statement with use of the passive voice, and, in the process, neutralising for the jury audience the stark vision of the defendants’ act of murder.⁵¹

⁴⁹ Posner, *Law and Literature*, p.16.

⁵⁰ James Boyd White, preface to *The Legal Imagination*, xiii.

⁵¹ *R v. Whiteside and Dieber* [2000] VSC. para 16, Puren and Rush, “Fatal (F)laws,” p.211.

What this analysis demonstrates is that in the midst of the fierce debates regarding the influences among legal and literary culture the tangible effects of the latter can be seen in our everyday enactments of law. This narrative represents only one of many that recount the facts of Keith Hibbins' death, but it nevertheless points to the subtleties of the unmistakable linguistic and literary imprint on our contemporary formulations of 'justice.' This imprint relies on a connectivity between the discourse of law and the arts that is grounded in the specific ideologies and practices of law in the past; these, the current study argues, can be usefully traced to the period that is the focus for this study, in which, as Bradin Cormack explains, England saw the rise of the common law and in its increasing rationalisation and centralisation, the development of the law's interpretative hegemony.⁵²

Historical Context and Critical Responses

While the recent attention to literary culture's impact on the law exhibited in Puren and Rush's study, and also in many others, can be attributed in part to the interdisciplinary turn in academic research during recent decades, it is evident that modern lawyers' recognition of the subtleties of literary and linguistic effects on the law is not new. Sir Francis Bacon, for example, in his *Advancement of Learning* (1605) describes the "false appearances that are imposed upon us by words," which "mightily entangle, and pervert the judgement,"⁵³ and in an extended discussion of poesy he also points to the deceptive qualities of narrative in the creation of historical 'truth': "[n]arrative is a mere imitation of History, that in a manner it deceives us; but

⁵² Cormack, prologue to *A Power to do Justice*, p.1.

⁵³ Francis Bacon, *The tvvoo bookes of Francis Bacon of the proficiencie and aduancement of learning, diuine and humane* (London: 1605), STC (2nd ed.) / 1164, 99836346 <<http://eebo.chadwyck.com>> [accessed 10.12.10] (Bk.2. p.57). Cambridge University Library.

that often it extols matters above belief.”⁵⁴ Bacon’s views reflect an earlier medieval lawyerly preoccupation with truth, language, and the power of rhetoric, as these lines from *Confessio Amantis* by the fourteenth-century moralist and lawyer John Gower aptly demonstrate: “For if the wordes semen goode / And ben wel spoke at mannes Ere, / Whan that ther is not trouthe there, /Thei don fulofte gret deceipte; / For whan the word to the conceipte / Descordeth in so double a wise, / Such Rethorique is to despise / In every place, and forto drede.”⁵⁵ In consideration of these historical examples it may well be argued that the scholarly attention to the interfaces of law, language, and literary culture that emerged during the latter part of the twentieth century as law and literature studies represents something of a renaissance. As I shall demonstrate, early modern lawyers, poets, and dramatists examined just these questions of linguistic indeterminacy and of literature’s relation to law, and also pondered what they might mean for the conceptualisation of morality, political ethics, and justice. Indeed, it will become clear during the tracing of these ideas in the historical context that the intersections of early modern literary and legal cultures are in many ways more pronounced and more complex than is frequently acknowledged.

In spite of this lack of acknowledgment, recent works have broken new ground in the study of literature and law as an interdisciplinary field, and the current study has been informed by a genus of new work in literary studies that privileges aspects of law and legality as the focus for a vital re-examination of renaissance poetry, prose, and drama – a focus that has produced an innovative and more nuanced understanding

⁵⁴ Francis Bacon, *Of The Advancement and Proficiency of Learning of the Partitions of Sciences IX Bookes. Written in Latin by the most eminent illustrious & famous Lord Francis Bacon Baron of Verulam Vicont St Alban Counsilour of Estate and Lord Chancellor of England. Interpreted by Gilbert Wats*, (Oxford: 1640), STC (2nd ed.) / 1167.3, 99842611 <<http://eebo.chadwyck.com>> [accessed 10.12.10] (2.13.I. pp. 105-106) Harvard University Library.

⁵⁵ Diane Watt, “Literary genealogy, virile rhetoric, and John Gower’s *Confessio Amantis*,” *Philological Quarterly*, 78.4 (1999), 389-415 in *Literature Online* <<http://lion.chadwyck.co.uk>> [accessed 12/12/10] (p.395), citing John Gower, “*Confessio Amantis*,” Bk.7, 1550-7 in *The English Works of John Gower*, ed., G.C. Macaulay (London: Kegan Paul, Trench, Trubner, 1900-1901). Gower is generally thought to have studied law although this is subject to conjecture.

of early modern cultural and social contexts. Fresh critical attention to the interactions among literary culture, legal thinking, and the modes of early modern jurisdiction has shown how an appreciation of the correlation between literary and legal cultures does not only crucially inform our reading of the early modern canon, but also helps us recover a legal history more attuned to the concept of law as social discourse. Of note amongst these works, Luke Wilson's *Theaters of Intention* (2000) presents an examination of the way in which a changing early modern legal concept of intention shaped the dramaturgy in canonical works written by Shakespeare and his contemporaries.⁵⁶ Also making a contribution to literature and law studies is Paul Raffield's *Images and Cultures of Law in Early Modern England* (2004), which examines concepts of justice and political power whilst providing a fascinating and informative history of early modern legal institutions, and Subha Mukherji's *Law and Representation in Early Modern Drama* (2006), which investigates the connections between legal and dramatic evidence.⁵⁷ Emphasising the range of early modern legal settings, Bradin Cormack's *A Power to do Justice* (2007) examines the conceptual and pragmatic issues of jurisdiction whilst re-evaluating the nature of jurisdictional boundaries and their effects on literary production.⁵⁸ Cormack's concept of jurisdictional instability or flexibility is one pertinent for the present study in that it highlights afresh the fluidity of jurisdictional borders. In this respect, Cormack's emphasis on the law's improvisational capacity coheres with this study's findings of the way in which some prosecutorial action, notably that for sexual offences, was unconfined to the jurisdictional space of the criminal court to which it was formally allocated.

⁵⁶ Luke Wilson, *Theaters of Intention: drama and the law in early modern England* (Stanford: Stanford University Press, 2000).

⁵⁷ Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558-1660* (Cambridge: Cambridge University Press, 2004). Mukherji, see p.3. n.

⁵⁸ Cormack, see p.3.n.

Presenting a different focus, Lorna Hutson's *The Invention of Suspicion* (2007) convincingly illuminates how formal techniques of vernacular dramatic representation developed in relation to legal thought and procedure during the late sixteenth century, and shows in particular how forensic rhetoric and a changing juridical concept of evidence shaped the work of early modern dramatists.⁵⁹ Of particular interest for the purposes of the present study is Hutson's attention to the way in which penitential theology was incorporated in to the secular legal framework, and how a Protestant ascendancy shaped the law in relation to concepts of morality.

Numerous excellent shorter studies have also freshly contributed to the understanding of historical legal and literary contexts. Of the shorter works recently produced, and one that indicates both the importance of an understanding of historical linguistic contingency, and also specifically engages with questions of legality and morality, is Brian Cummings's "Conscience and the Law in Thomas More" (2009), which revealingly discusses the conceptual distinctions in the term 'conscience' so as to provide a cogently theorised study of the personal crisis of Sir Thomas More.⁶⁰

This pioneering new work in early modern legal/historical and legal/literary study has greatly enhanced an understanding of the significance of literary and linguistic culture in the formulations of law, and also, *vice versa*, has highlighted the importance of early modern legal thought and procedure in the creation of literary texts. The current study has developed in response to many of the critical insights contained in this body of work. Particular to this study, however, is an investigation into how literary/aesthetic forms intersect with concepts of law and legality in the shaping of popular ideas of morality. My primary concern is to examine the ways in which a

⁵⁹ Hutson, *The Invention of Suspicion*, see p.3.n.

⁶⁰ Brian Cummings, "Conscience and the law in Thomas More," *Renaissance Studies*, 23.4 (2009), 463-485 in *Literature Online* <<http://lion.chadwyck.co.uk>> < doi: 10.1111/j.1477-4658.2009.00605.x> [accessed 12/12/10].

hegemonic literary culture responded to concepts of personal and political ethics and, in particular, to those aspects of personal human relations that are subject to surveillance by the law. So, for example, in terms of the private sphere I consider the licit and illicit sexuality of individuals whilst also investigating the issues surrounding ideas of individual conscience. Within the sphere of the public realm, I examine the concept of moral authority both in terms of the ethical duties between ruler and subject, and also in relation to the moral trajectories of the law.

As Robin West reminds us, ‘morality’ is a difficult term in relation to legal systems mainly because our sense of morality is in some ways a product of legal culture itself.⁶¹ While this is correct, literature frequently challenges law’s normative constructions and illuminates the complexity of ethical dilemmas within the wider context in which they occur. Arguably this statement is equally true both for the historical context and for our contemporary society, but it is perhaps important to note that ideologies of morality are contingent, and that early modern ideas of ethical human behaviour are subject to complex influences derived both from the classical past and a contemporary religious doctrine marked by dissent, as well as from a legal culture laying claim to a quasi-religious secular authority.⁶²

As we might expect, the connotations of ‘morality’ are multifarious in the early modern period, and the term resonates with the various doctrinal and idiomatic uses of the word. Edmund Coote in his popular and much reprinted pedagogic guide to the English language, *The English schoole-maister* (1596), defines morality simply as “civil behaviour,” while in a dedicatory verse in celebration of the mother tongue from an early translation of Terence (c. 1520) the author lauds “mafter Gowre,” who

⁶¹ West, introduction to *Narrative, Authority, and Law*, p.6.

⁶² Raffield, *Images and Cultures of Law in Early Modern England*. See Raffield’s discussion of the legal profession’s claims that English common law represented the moral precepts both of Christian doctrine and Neoplatonic humanism. pp.2-4.

“of moralite wrote ryght craftely.”⁶³ These uses of the term are suggestive of its wide application to a variety of contexts. Indeed, the Ricardian poet, John Gower, to whom the translator of Terence refers, presents an early example in his *Confessio Amantis* (1390) of the shades of meaning that may be attached to morality. In terms of the monarch and the ethics of rule, as Winthrop Wetherbee suggests, Gower’s methodology “places the obligations of self-governance and kingship in the context of world history, natural philosophy, and an alternative, classical system of ethics.”⁶⁴ And as Diane Watts has shown, Gower’s introduction of an Aristotelian treatise on kingly behaviour into his wider elaborations of confessional and priestly exposition of sin, together with his focus towards the divisions of linguistic, social, and political ethics, invite manifold interpretations.⁶⁵ In this respect the current study reflects this methodology in its broad rather than reductive interpretation of morality as a term relevant to a variety of circumstances, and as denotative of a spectrum of behaviour.

Concepts of ethics circulating within sixteenth- and early seventeenth-century civil society appeal then to the tenets both of Judeo-Christian and classical ideologies of moral virtue. In conjunction with the traditional paradigms of Aristotelian moral philosophy, ideologies of virtue encompass not only the private and public self-government of the individual, but also the politics of government and the moral efficacy of the law. Providing a model of an idealised code of behaviour in respect of every aspect of human relations ranging in scope from marriage to the ruler’s duty to his subjects, the tripartite scheme of classical moral philosophy – ethics, or the

⁶³ Edmund Coote, *The English School-Master* (London: 1670) Wing / C6073, 99899950, <<http://eebo.chadwyck.com>> [accessed 12/12/10] (p.71). Folger Shakespeare Library; Terence, *Terens in englysh* (Paris: ca. 1520) STC (2nd ed.) / 23894, 99836842 <<http://eebo.chadwyck.com>> [accessed 12/12/10] (sig.Air) British Library.

⁶⁴ Winthrop Wetherbee, “John Gower,” in *The Cambridge History of Medieval Literature*, ed. by David Wallace (Cambridge: Cambridge University Press, 1999), pp.589-609 (p.604), cited in Watt, “Literary genealogy, virile rhetoric, and John Gower’s *Confessio Amantis*,” p. 394.

⁶⁵ Diane Watt, *Amoral Gower, Language Sex, and Politics* (Minneapolis: University of Minnesota Press, 2003), p. 17.

morality of the self; oeconomics, or the virtuous government of the household; and politics, or ethical administration of the state – can be seen to promote the morality of the individual, both ruler and ruled, as the locus for the very health and stability of the commonweal.⁶⁶ The strong association between public and private morals can be seen in a Platonic sense as a concept of harmony – both that of the state, which is to be achieved by just rule and the upholding of order by the legal establishment, and also that of the individual soul, which is developed through contemplation, self-knowledge, and the training of virtue.⁶⁷

Following these themes and examining sexual and political morality within this taxonomy in relation to the cross-pollination of legal and literary texts, the current study develops the assertion that it is at the site of affective personal relations that early modern ideologies of morality and ethical politics are under the most pressure. The boundaries between the personal and the political appear indistinct in the systems of early modern rule, and powerful individuals' subjective view of morality is the lens through which cultural mores are construed and their legal terms dictated so that the divisions between public and private, between the personal and the political, begin to fragment. We shall see in Chapter 1, for example, that the secular common law prosecutions for rape, partially distanced as they were from the moral jurisdiction of the ecclesiastical courts, depended on laws that had developed in response to the individual preoccupations of a ruling class, and, furthermore, that they continued to evolve in response to the familial concerns of members of elite society.

⁶⁶ Jill Kraye, "Moral Philosophy," in *The Cambridge History of Renaissance Philosophy*, ed. by Charles B. Schmitt and Quentin Skinner (Cambridge: Cambridge University Press, 1988), pp.303-386.

⁶⁷ Frances A. Yates, *The French Academies of the Sixteenth Century* (London: The Warburg Institute, University of London, 1947; repr. Nendeln, Liechtenstein: Kraus-Thomson, 1968), pp.118-119.

The subjectivities of those within a potent early modern privileged class shaped the cultural dictates of morality both in categories in which the essential concept of right and wrong was immutable (the contestation surrounding sexual crime is generally only ever in terms of whether it has taken place, and not in terms of its cultural categorisation as immoral), and also in those in which the figuring of morality itself was open to interpretation and contestation. These conceptual differences – for example that between the ethos of heroic neo-chivalric militarism that formed the Protestant Elizabethan ethic, and the culture of studied pacifism adopted by James I – can be seen to order the political struggles of early Stuart rule. An examination in Chapter 4 of the thesis of these conceptual disparities reveals the challenge they present to established concepts of *virtu*, patriotism, and national identity.

Of note here for the examination of interpretative hegemony, is that early modern intellectual communities possessed the means to draw on a vast range of authoritative classical and biblical sources with which to interpret, often in singular ways, the questions of morality relating to the tangible ethical dilemmas presented by their own religiously and politically litigious society. In its assessment of these dilemmas, the current study examines the way in which authors and commentators viewed ethics with an increasingly nuanced perspective as they accommodated the political upheavals of the late sixteenth and early seventeenth centuries, whilst supporting their knowledge claims with multiple resources from the pagan and Christian worlds. Like the ‘Picture(s) Wrought to Optike Reason’ described by Chapman and Shirley in *The Tragedy of Chabot*, in which a particular perspective reveals truth, the corpus of works that responded to the ethical arguments of the period can be seen to demonstrate its authors’ complex individual doctrinal, philosophical, or political principles. As with the ocular anamorphic construction of ‘Optike Reason,’ truth

depended on where you stood in relation to the whole. So while ‘morality’ might appear to denote a universal concept within the early modern Christian ideology, cultural consensus on its precise terms remains surprisingly elusive.

In view of this, the study pays particular attention to the way in which adjustments to an ostensibly unilateral socio-religious concept of morality taxed the ingenuity of writers within the politicised arena of early modern intellectual endeavour. Responses, for example, to the early seventeenth-century predicaments surrounding the moral integrity of the Jacobean court resulted in a corpus of literary and legal works whose authors had first to negotiate between a ‘known’ moral order and something other – an ‘other’ which was nevertheless sanctioned by the inalienable moral pre-eminence of the monarch. Morality was negotiated to accommodate power – a concept that frames the investigations in Chapters 3 and 4 of the thesis into the allegations of adultery, murder, licentiousness, and legal corruption within the elite circles of those close to the crown. Of particular interest in this respect is that the collusion, or otherwise, of writers and commentators in the justification of a morality, which to many looked much like its obverse, and which tested concepts of legality and civility, provides a keen demonstration of the politicised intellectualism of early modern literate society.

Method

The methodology adopted for the purposes of the study can perhaps be best described as historicized and intertextual; the study references the fields of social and legal history, in addition to those of literary criticism and cultural studies, in order to examine ‘law’ as an idea, as a social exchange and as a cultural practice. While

attention is given to specific areas of law (the criminal law of rape in Chapter 1; constitutional law and the naturalisation debates of 1604 in Chapter 3; the laws of equity and the prerogative disputes of 1616 in Chapter 4), law is also considered here in its broadest sense to include both positive law as that which pertains to criminal or civil legal proceedings, or to the imposition of the social contract of law by a temporal authority, and also law as it relates to the wider concepts of natural law and justice, concepts to which many writers' appealed in their elucidations of ethics.

Research of a range of primary literary and legal materials supports the interdisciplinary approach of the study. Information from assize records and law reports, together with legal treatises including Edward Coke's *Institutes*, and *The Lawes Resolutions of Women's Rights*, are examined in conjunction with other theoretical works written by and for lawyers.⁶⁸ These include, for example, Abraham Fraunce's *The Lawyers Logike*; John Dodderidge's *The Lavvyers light*; and Henry Finch's *Law or Discourse thereof in Four Books*.⁶⁹ William Dugdale's *Origines Juridiciales* and John Fortesque's *De Laudibus Legum Angliae*, together with Edward Waterhous's commentary on Fortesque, *Fortescutus Illustratus*, provide material for an examination of traditional interpretations of law and legal discourse; while the retrospective found in Arthur Wilson's *The History of Great Britain*, together with the writings and letters of James I and the cultural history contained in Gerard Legh's

⁶⁸ Sir Edward Coke, *The Third Part of the Institutes of the laws of England: concerning high treason, and other pleas of the crown, and criminall cases*, (London: 1648), Wing (2nd ed.) / C496, 99832715 <<http://eebo.chadwyck.com>> [accessed 23/12/10] British Library; *The lavves resolutions of women's rights: or, the lavves prouision for women* (London: 1632), STC (2nd ed.) / 7437, 99836064 <<http://eebo.chadwyck.com>> [accessed 23/12/10] British Library. All references are to this edition and cited parenthetically in the text and abbreviated L.

⁶⁹ Abraham Fraunce, *The Lawiers Logike, exemplifying the praecepts of Logike by the practise of the common Lawe*, by Abraham Fraunce, (London: 1588), STC (2nd ed.) / 11343, 99850340 <<http://eebo.chadwyck.com>> [accessed 23/12/10] University of Wisconsin Library; John Doddridge, *The lavvyers light, or A due direction for the study of the Law for methode* (London: 1629) STC (2nd ed.) / 6983, 99845411 <<http://eebo.chadwyck.com>> [accessed 23/12/10] Henry E. Huntington Library and Art Gallery. All references are to these editions. Sir Henry Finch, *Lavv, or, a discourse thereof in foure bookes*. (London: 1627) STC (2nd ed.) / 10871, 99857201 <<http://eebo.chadwyck.com>> [accessed 23/12/10] British Library. All References are to this edition and cited parenthetically in the text and abbreviated D.

Accedens of Armory, provide material for an examination of elite society's perceptions of court life.⁷⁰ The works of legal historians, particularly those of J.H. Baker, W.R. Prest, and J.S. Cockburn provide a framework for the legal investigations within the thesis.⁷¹

In terms of the literary works studied, I investigate a variety of early modern literary and dramatic forms including prose commentaries, play texts, masques, and verse rather than focusing on a single generic strand of literary production, which collectively show the negotiations between legal and imaginative concepts of morality across generic boundaries. The literary range encompasses the poetry of Shakespeare and Spenser, and the work of the moral satirists Richard Niccols and Michael Drayton, together with lesser-known works such as the play text of George Chapman and James Shirley's *The Tragedie of Chabot Admirall of France*. Revels culture is examined in terms of the morally instructive dramatic performances at the Inns of Court, while the social politics of the masque is investigated in relation to Thomas Campion's *The Lord Hay's Masque*, written while Campion was in chambers at Grays Inn in 1607, and the masque of Arthur Broke's *Desire and Lady Bewty*, which was performed by members of the Inner Temple for Elizabeth I during the Christmas

⁷⁰ Sir John Fortescue, *A learned commendation of the politique lawes of England*, (*De laudibus Legum Angliae*) trans. by Robert Mulcaster (London: 1599) STC (2nd ed.) / 11196, 99838320 <<http://eebo.chadwyck.com>> [accessed 23/12/10] Henry E Huntington Library and Art Gallery; Sir William Dugdale, *Origines juridiciales* (London: 1666) Wing / D2488, 12270048 <<http://eebo.chadwyck.com>> [accessed 23/12/10]; Henry E Huntington Library and Art Gallery; Edward Waterhouse, *Fortescutus Illustratus, or a commentary upon that nervous treatise De Laudibus Legum Anglae* (London: 1663) Wing / W1046, 12255676 <<http://eebo.chadwyck.com>> [accessed 23/12/10] University of Michigan Libraries; Gerard Legh, *accedens of armory* (London: 1562), STC (2nd ed.) / 15388, 99836924 <<http://eebo.chadwyck.com>> [accessed 23/12/10] British Library; Arthur Wilson, *The History of Great Britain, being the life and reign of King James the first relating to what passed from his first access to the crown, til his death* (London: 1653) Wing / W2888, 17882302 <<http://eebo.chadwyck.com>> [accessed 23/12/10] Henry E Huntington Library and Art Gallery.

⁷¹ These include W.R. Prest, *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640* (London: Longman, 1972); J.S. Cockburn, "Early Modern Assize Records as Historical Evidence," *Journal of the Society of Archivists*, 5.4 (1975), 215-231 in *Informaworld* <<http://www.informaworld.com.ezproxy.sussex.ac.uk>> <doi: 10.1080/00379817509514051> [accessed 12/12/10]; J.H. Baker, *The Legal Profession and The Common Law: Historical Essays* (London: Hambledon Press, 1986).

celebrations of 1561-2.⁷² In contrast to the seeming panegyric of lawyerly masque culture, I also investigate the work of the Inns' satirists, in particular that of Everard Guilpin and Thomas Bastard in the 1590s in relation to the criticisms of the changing social hierarchies at the inns, and the perceived immorality and avarice of the rising mercantile legal class.

Structure

The chapters of the thesis each investigate how a particular historical moment amplifies the interrelationships of the personal and the political in relation to questions of morality. Chapters 1 and 2 focus on the Elizabethan period to 1603, while Chapters 3 and 4 examine the new political order heralded by the ascendance of James I to the English throne. Moving from a broad investigation of law and literature's interrelation in respect of ethics to particular historical instances when morality is in crisis, I first examine sexual crime in terms of its exposition in legal texts and in relation to its interpretation by lawyers through recourse to distinct literary authorities. The imaginative unification of literature and law is then contextualised by tracing its traditional practise in the legal training and humanistic culture of the Inns of Court, a project that reveals the growing interpretative hegemony and political authority of the Tudor legal community. In an examination of how this phenomenon translates into a later period, I investigate literary responses to the legal and moral challenges instigated by the transition to Stuart rule, before examining their development during the middle and latter years of the reign of James I.

⁷² *Works by T. Campion*, ed. by Percival Vivian (Oxford: Clarendon Press, 1909); D.S. Bland, *Three Revels from the Inns of Court* (Amersham: Avery, 1984).

I examine in chapter 1 an ostensibly unequivocal early modern category of immoral conduct, a violation of sexual morality punishable with death at common law. Investigating the felonious crimes of ravishment and rape in relation to lawyers' responses to the crimes in legal treatises and reports, I consider the linguistic perplexities in early modern taxonomies of criminal sexual behaviour and their relation to the early modern confusion of spiritual and secular categories in respect to sexual crime. Changes in the laws on rape that included new statutes in 1555 and 1597, which established abduction and rape as separate crimes, and the recognition of child victims and the withdrawal of benefit of clergy in 1576, cohere with the suggestion that important changes took place during the latter half of the sixteenth century in relation to the cultural understanding of rape.⁷³ In examining the language and literature of rape in relation to its categorical complexity and its representation in literature, this chapter responds to work undertaken by Subha Mukherji on spousal litigation and the inconsistencies and fluidity of marriage law. Mukherji points to the way that dramatic scenes can translate the "sense of a lacuna," or gap, within the language of the marriage ritual – "a possibility of the co-existence of opposite polarities of meaning in a single act or formulation" – a discrepancy that often presents a rift between concepts of natural law and institutional legality.⁷⁴ The language of 'rape' more than any other carries the possibility of this coexistence of opposing meanings and a consequent tension between institutional and moral law. As Francis Ferguson attests: "rape law continually suggests as a paradigmatic interpretative strategy the reversibility of the terms that seem to be asserted by the

⁷³ See Nazife Bashir, "Rape in England between 1550 and 1700," in *The Sexual Dynamics of History: Men's Power, Women's Resistance*, collection by The London Feminist History Group (London: Pluto Press, 1983), pp. 28-42, (p.41).

⁷⁴ See Subha Mukherji, "'Of rings, and things, and fine array': marriage law, evidence and uncertainty" in *Law and Representation in Early Modern Drama*, pp. 17-54 (p. 30).

charge of rape itself.”⁷⁵ Mukherji’s findings suggest that the variance between formal law and senses of moral justice represents a rift between institutional legality and natural law that depends for its disjuncture on the instability of the various meanings and implications of ‘consent.’ I argue that similar linguistic and conceptual uncertainties attach to ‘consent’ in rape cases which work to obscure the clear moral imperative of the law to punish rape, and, further, that these uncertainties contribute to a legal miasma in relation to the categorisation of rape for the purposes of prosecution, and to the definition of the circumstances under which rape can be said to have occurred. I suggest that early modern official juridical interpretation of rape is often dependant on forms of legal, literary, and cultural fiction – forms that are derived from classical narratives of transgression or instances of mythic sexual symbolism. My findings of an early modern belief that literature is the source from which legal concepts can emerge prompt the investigation in the subsequent chapter into the historical pedagogic principles underlying this belief.

Within this context, Chapter 2 considers a quite different but equally significant area of early modern ethics in its investigation of the legal profession and the self-fashioned moral probity of lawyers during a period when the legal establishment was undergoing rapid expansion. Scrutiny of the history and *modus operandi* of the Inns of Court provides an additional contextualisation of legal processes which builds on that in Chapter 1; it also forms the basis for a discussion of the way in which the early modern tradition of aesthetics and law developed throughout the late sixteenth and early seventeenth centuries in a trajectory that has meaning for current legal studies. In examining the legal ideologies and traditions that established the links between the discourse of law and the arts, I critically engage with some of the literary and

⁷⁵ Frances Ferguson, “Rape and Rise of the Novel,” *Representations*, 20 (1987), 88-112 in *Literature Online* <<http://lion.chadwyck.co.uk>> [accessed 23/12/10] (p.96).

dramatic output of the Inns in relation both to the politicised didacticism of masque culture, and in terms of the lawyerly authority gained from its spectacular displays of identity. A study of the Revels' productions of 1561-2, in which the politics of the monarch's potential marriage plans is played out in public spectacle, demonstrates how the most affective of the Queen's personal relationships are subject to the attention of political strategists. The politicking on behalf of the lawyerly fraternity lays claim to the highest of moral agendas – that of ensuring the politically expedient marriage and subsequent issue of the monarch – and in so doing threatens to subrogate the Christian ethic of free marital choice in favour of the higher moral call of monarchic duty.

While a conventional premise of the current study is that perceptions of cultural mores are in part created in, and promulgated through the fictional representations of human relations in drama, poetry and literature, a major focus of the work is towards the unique contribution of the historical legal community in this process, and thus its vital role in the artistic developments of the sixteenth and seventeenth centuries. I argue that lawyers held a distinct position in early modern society as a class wielding extraordinary power over interpretative practices and imaginative currency. This together with lawyers' self fashioned moral superiority as *narratores*, as protectors of the ancient English constitution and as guardians of art as well as law, ensured their place in the forefront of early modern political and intellectual life.⁷⁶ Analysis of early modern legal culture in this chapter supplies evidence not only of the importance of the fictional projects of drama and poetry in the development of legal discourse, but also produces a demonstration of the way in which the power of literature shapes relations within the Tudor and Jacobean political orders.

⁷⁶ An insightful reading of the early modern legal profession's self professed status can be found in Paul Raffield, introduction to *Images and Cultures of Law*, pp. 3-5.

Chapters 3 and 4 examine issues of legal ethics and power in terms of the duties between ruler and ruled in the context of the changing political arena after the Jacobean accession in 1603. Chapter 3 specifically examines the literary and legal responses to the Parliamentary discord of 1607 that related to the proposed union between Scotland and England. In a reading that explores the imaginative representations of kingship, this chapter investigates the way in which the legal fiction of the King's two bodies – a concept that had a similar resonance in Jacobean culture as it had in the reign of Elizabeth – can be seen to mediate controversies and shape legal concepts. Ideas of kingly *virtu* are considered in relation to the outpouring of literary protest surrounding the naturalisation debates and the perceived moral dissoluteness at court, which were topics much discussed by opponents of James's Scots entourage and a critical subject for royal protestors, whose rhetoric competed with that of a carefully crafted royal propaganda that turned on James's self-styled moralistic identity as philosopher and peacemaker.

James's perceived promotion of low-born Scots to positions of unprecedented power, and the high profile marriages of Scots men to English women (a form of interracial union that had previously been widespread but illegal in the English borderlands) are also examined in relation to the ethical controversies of James's rule. Here a particular emphasis is placed on the (il)legality of the contentious divorce proceedings between the Lady Francis Howard and the Earl of Essex, whose separation enabled Howard's subsequent remarriage to James's male favourite and compatriot, Robert Carr. I examine the way in which critics of the new match hailed this subversion of the Christian ethic of holy matrimony, which could be equally condemned in Aristotelian terms as the defilement of the virtuous household, as evidence of the immorality of the Stuart administration. Symbolic support of the

couple is investigated in relation to the literary endeavours to ameliorate Howard's reputation, endeavours made memorable through the learned verses of George Chapman's epithalamion, *Andromeda Liberata*.⁷⁷ I argue that Chapman's scholarly appeal to Neoplatonic ethics (a particular feature of Chapman's work and also of masque culture, which is first examined in Chapter 2) signifies the ingenuity of authors in negotiating questions of morality arising within the factionalised arena of patronage and favour that characterised the royal courts.

Chapter 4 examines conscience and political morality in relation to competing epistemological claims to truth. The idea of conscience is examined both in terms of the individual, and also in the legal sense as it relates to the prerogative courts and the concept of equity. In a continuation of the discussion in previous chapters, linguistic contingency is further examined in the context of religious factionalism and truth telling, with an emphasis on the ideological challenges posed both to the law and the terms under which it operated by dissenting political voices. While this challenge can be seen to be explicit in terms of recusant thinking and the doctrine of equivocation, an arguably less dramatic but insidious attack on the law's universal authority was also taking place in terms of lawyers' arguments about the legality of judgements across jurisdictions in the various courts.

In a trajectory that brings together the legal, political, and individual moral scenarios of early Stuart rule examined in Chapter 3, I investigate some of the developments resulting from James's personalised style of politics and their culmination in the continuing disputes and disquieting legal events of 1616. The loss of perspective between the personal and the political is evident from the letters

⁷⁷ George Chapman, "*Andromeda liberata. Or the nuptials of Perseus and Andromeda*" (London: 1614), STC (2nd ed.) / 4964, 99843384 <<http://eebo.chadwyck.com>> [accessed 23/12/10] Henry E Huntington Library and Art Gallery.

exchanged between Carr and the King prior to Carr's fall, which coincided with the fading away of the political domination exerted by the Howards as the scandal of Frances's divorce became compounded by her indictment, together with her husband, for the murder of Sir Thomas Overbury. The role played by Sir Francis Bacon and the King in the trial process was much rumoured, and was suggestive to many of the way in which legal politics depended on the royal monocracy. Literary responses to these events are investigated across a range of material that includes a reading of George Chapman and James Shirley's *Chabot* of 1639 in the context of its potential earlier links with the personal life of Chapman's patron, Robert Carr, and in relation to the questions of legality and power that the play elaborates.

This study thus engages with a broad range of literary material. What connects the selected texts for the purpose of the thesis are their oft-politicised responses to the affective personal relations of early modern life, and their particular engagement with the negotiations of morality taking place within the spheres of political power. The scenarios discussed in each chapter forward my examination of morality by providing an insight into the social and cultural fabric of sixteenth- and early seventeenth-century society, and by giving a sense of the way in which writers thought about the real moral dichotomies that they either encountered, or examined, as participants of an authoritative and litigious early modern intellectual community.

Chapter 1

‘Legal Fiction’: the affinity between rape myths and early modern socio legal constructs of rape

Women and the Law

The years of the 1570s are notable for a fresh cultural celebration of female chastity, and the commemoration of the emblematic status of England’s virgin Queen as the embodiment of female purity and virtuous celibacy is discernable in portraits painted by Hilliard.¹ For ordinary women, an important change in the law in 1576 asserted anew a woman’s right to bodily chastity when those accused of rape were denied benefit of clergy in the common law courts. In response to a case tried in the Queens Bench in 1571, a loophole in the law was also closed which had previously denied protection to underage girls. These changes reaffirmed, theoretically at least, the ancient dictum still enforceable in early modern English law that forfeiture of life and limb should be the penalty for the sexual violation of England’s wives and daughters. The maxim that a woman’s sexual honour was as precious as life itself came down to the Renaissance through the teaching of the early Church Fathers. Death was the sanctioned means to punish rape whether or not the rapist was killed by the violated woman’s male kin or,

¹ This iconography is exemplified in portraits painted probably by Hilliard c 1575 in which Elizabeth is linked through association with the pelican and the phoenix to the qualities of celibacy, piety, and charity. See Tarnya Cooper, “The Queen’s Visual Presence,” in *Elizabeth: The Exhibition at the National Maritime Museum*, ed. by Susan Doran (London: Chatto & Windus, 2003), pp. 175-181 (p.179).

according to the teaching of St. Jerome, whether the raped woman herself killed her assailant in retaliation.²

The concept of woman's legitimate right to resist tyrannical oppression resonates in the Old Testament narratives of female heroism and slaughter: that of the bloody death of Holofernes at the hand of Judith for example, which was popularised in sixteenth-century literature in Du Bartas's *Judet* (1574), and the tale of the Canaanite Sisera's slaying by Jael, who is valorised as a Protestant heroine in lawyer Thomas Bentley's *The Monument of Matrons* (1582). As political motifs, examples of militant feminism became part of an armoury of Protestant signification that dwelled on the radical, but sanctioned rebellion against the perceived tyranny of the Church of Rome.³

Paradoxically, in spite of a seeming legal and cultural veneration of women's bodily integrity and the imaginative celebration of *femmes fort* as the embodiment of virtuous Protestantism, any concept of real women's right to radical independence ran counter to that of her lawful and principled place as in subjection to man, who was perceived to be her superior physically, morally, and intellectually.

While many aspects of the Church's early teaching became inscribed in English law, so that the death penalty continued to be sanctioned as a punishment for rape throughout the sixteenth and seventeenth centuries, St. Jerome's endorsement of women's right to militant resistance was a far cry from the restrictions placed on the autonomy of real women within the legal system.⁴ In civil matters, and in the criminal courts, women were formally deemed unequal to men. Women were officially unable to bring suits in their own name and had limited contractual rights. Unmarried women were under the

² Ian Donaldson, *The Rapes of Lucretia: A Myth and its Transformations* (Oxford: Clarendon Press, 1982), p.25. Donaldson cites *Against Jovianus*, bk.i, in *The Principal Works of St. Jerome*, trans. by W. H. Fremantle with G. Lewis and W.G. Martley (London: 1893).

³ Margarita Stocker, *Judith Sexual Warrior: Women and Power in Western Culture* (New Haven and London: Yale University Press, 1998), p. 56. For an account of the wide popularity of these tropes in early modern art, literature, and décor see pp. 42, 50-51.

⁴ The death penalty for rape continued until the nineteenth century and was finally abolished in 1841.

legal jurisdiction of their fathers or male kin and, as *femmes covert*, married women were legally defined as one person with their spouse.⁵ In the criminal courts, a male felon's wife could not be named as accessory to the crime even when in full knowledge of his guilt. This official lack of parity in law was a feature even in death: in cases of spousal murder the woman's slaughter of her husband was deemed petty treason, whilst if "The husband maliciously killeth his wife; this is but murder." The reason for this difference, as seventeenth-century lawyer Michael Dalton opines, is "that the one is in subiection, and oweth obedience, and not the other."⁶

Although women lived in a state of legal semi-powerlessness in relation to men, it was often held that their ability to manipulate and circumvent law was highly developed. As T.E., the author of *The Lawes Resolutions of Womens Rights* observes, "women have no voyce in Parliament" and "make no Lawes," they are taken to be either married or awaiting marriage, "they consent to none, they abrogate none," but they can nevertheless in some cases "shift it well enough (*L.1.III.6*)."⁷ Evidence of early modern women's legal activities demonstrates, as Subha Mukherji suggests, that women did, indeed, frequently participate independently in law, for example in the manorial and equity courts where they maintained *femme sole* rights, but shows that they also acted quasi-legally or influentially in areas from which they were officially debarred.⁸ In Tim Stretton's words, "The chorus of advice counselling women to stay at home did not prevent them from going to court" but, perhaps, "could make them warier litigants than

⁵ This legal fiction was to some extent tempered by the actions of Chancery where exceptions to the doctrine of coverture were developed that allowed women to circumvent some of the limitations placed upon them. See Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998), p.26.

⁶ Michael Dalton, *The countrey iustice containing the practise of the iustices of the peace out of their sessions*, (London: 1619), STC (2nd ed.) / 6206, 99842968 < <http://eebo.chadwyck.com> > [accessed 21st December 2010] (p. 213) British Library. The category of petty treason was not abolished until 1825.

⁷ See Introduction, p.30.n.

⁸ Mukherji, *Law and Representation in Early Modern Drama*, p.214.

men.”⁹ The perception that women could manipulate their disadvantaged status to their own ends was a common one. As Mukherji’s study of legal scenarios in early modern plays reveals, women were particularly associated in the drama with trickery, artifice, and sexual intrigue, an association that is perhaps reflective of real women’s practical need for a quasi-legal circumvention of their own exclusion in law.¹⁰

In terms of the law’s protection of female chastity, rape was universally acknowledged as a heinous act but the idea that illicit seduction, or a degree of female sexual trickery was at play in accusations of rape featured prominently in the popular imagination. As a result, the legal literature is full of brief, unequivocal definitions of rape, but the cultural models to which lawyers’ turn in order to illustrate the categorisation of rape and ravishment often work to confuse any concept of moral or legal certitude and, instead, emphasise rape’s categorical complexity. T.E., whose identity is not established but who is generally thought to be lawyer Thomas Edgar, and also the celebrated Sir Edward Coke, use legendary figures of myth and history – those of the Sabine women, Lucretia, and the Spartan Helen – in order to classify rape, and, in so doing, demonstrate their own difficulties in untangling rape’s legal ambiguities. To some extent these are fine examples in that the narratives of these figures are imbued with the uncertainties, socio- political subtexts, and moral dichotomies that frequently accompany accusations of rape. Their usage in the legal setting, however, appears to distance rape from its reality and reiterates the early modern stereotyping of women as morally dubious, whilst also contributing to a traditional legal thinking on rape that privileged women of class and position as the subjects of the law’s concern.

Women’s supposed subjection to the authority and the protection of their fathers and husbands ostensibly safeguarded them from inappropriate sexual advances or physical

⁹ Stretton, *Women Waging Law in Elizabethan England*, p.11.

¹⁰ Mukherji, *Law and Representation in Early Modern Drama*, pp. 206-214.

attack, but while the law appears unequivocal in its demand for vengeance against those that violated the chastity of England's wives and daughters, the secular laws are complicated by the instability of the referent 'rape' which in the early modern legal imagination signified not one, but several possible scenarios of immoral conduct.

The Laws on Rape

In the series of published law texts that were to shape legal discourse for more than a century, Sir Edward Coke glosses the criminal category of rape thus: "*Rape (n)* raptus is when a man hath the carnall knowledge of a woman by force and against her will."¹¹ Found in the first part of Coke's *Institutes of the Lawes of England* and derived from the pronouncements of medieval jurists, this concise formulation was invoked almost verbatim to describe criminal rape throughout the sixteenth and seventeenth centuries. Whilst appearing explicit, Coke's clear declaration belies the problematic nature of its terms. Indeed, rather than a universal category in which a lack of female agency was definitive of the offence, the classification of rape for the purposes of the law was subject to a degree of confusion which, in spite of the series of legal modifications during the sixteenth century, remained more complex than the absolute terms of Coke's gloss would suggest.

Like murder, rape was a crime against the common peace and thus a crime against the King. In the spiritual taxonomy it was a sin against the person, which required restitution to God in the form of repentance and, in the early Christian church, a form of restitution to the violated woman and her family through the offer of marriage. Marriage to the violator, if the woman agreed, could mitigate the theft of her moral status by

¹¹ Sir Edward Coke, *The first part of the Institutes of the lawes of England. Or, A commentarie vpon Littleton*, (London: 1628), STC (2nd ed.) / 15784, 99848602 < <http://eebo.chadwyck.com>,> [accessed 20th December 2010] (bk.2, ch.11, p.124) British Library.

returning her to a position within the authorised social spectrum of female identities: that of maid, wife, or widow. It followed that rape prosecutions in secular law were construed as theft of a woman's virginity, or, in married women, the theft of her unsullied procreative value. The secular classification of rape as a felony, however, made its prosecution complex. It seems that to some minds unless a woman's virginity or procreative value was of some economic worth (as in the case of women who had dower or inheritance) then there was technically no legal case to answer. By way of example, under the heading of *Felony for carrying away a woman against her will, &c.* found in the Third Part of Coke's *Institutes* is an interpretation of the statute law from Mary's reign, which Coke indicates in a marginal note is drawn from Justice William Dalison's reports c. 1557-1558. The excerpt illustrates the way in which legislators' preoccupations are focussed towards the secular interests of the elite, and in defining the conditions of criminal rape in economic terms it presents a conceptual division between the immorality and the illegality of rape:

This Act on the offenders part both extend to all degrees, and to all persons, but not to all women: for on the woman's part four things are necessarily required to make the offence felony. First, that the maid, wife or widow have lands or tenements, or moveable goods, or be an heir apparent. Secondly, that she be taken away against her will. Thirdly, that she be married to the misdoer, or to some other by his consent, or be defiled, (that is, carnally known). For if these concur not, the misdoer is no felon within this statute, but otherwise to be punished.¹²

Alluding to the possibility of forced marriage, or illicit elopement, and specifically focussed towards "Maidens and Women children of Noblemen, Gentlemen, and others, as well as such be heires apparent to their ancestors," this statute can be characterised by

¹² Sir Edward Coke, *The third part of the Institutes*, ch.12, p. 61. See also Sir Edward Coke, "Baker and Halls Case," in *The twelfth part of the Reports of Edward Coke* (London: Henry Twyford and Thomas Dring, 1656) Wing / C4969, 12395646 < <http://eebo.chadwyck.com>,> [accessed 20th December 2010] (p.100) University of Illinois Library.

its omissions with regard to the abduction or rape of the poor.¹³ It appears then that while a theological shift saw the common law's participatory justice system idealised as imparting a spiritual Protestant ethic to the law, the law's dual secular and spiritual status was, in relation to rape, sometimes a contrary one. The categorisation of rape in relation to moral precepts, those of the individual's inalienable right over his/her own person, and the entitlement to exercise his/her will in relation to God's teaching, were at odds in this instance with the law's primary socio- secular project of ensuring that elite patrilineal rights over matrimony were preserved.

The ordering of both licit and illicit sexuality were typically the preserve of the Church, and while rape had always been held a felony under criminal law, the secular legal system provided an erratic and clumsy apparatus for its prosecution. The unstable status of '*raptus*' as a reference to either an unwilling sexual assault or an illicit but consensual elopement, and also to the robbery of secular economic advantages or, indeed, to any one of these scenarios either singly or in combination, worked to produce a categorical confusion of its terms. Rape in the early modern context occupies a liminal space between crime and sin, so that in some instances the illegal aspects of elopement followed by assenting marriage are conflated with the immorality of violent physical attack. I suggest that it is this obfuscation in the law that is responsible for the gulf between the concepts of rape as a universal wrong – as it is so defined in the legal literature– and its conditional status in terms of punishment in the courts. Other definitive complexities also dogged efforts to define what constituted criminal rape and further contributed towards rape's conditional status. Difficulties with rape prosecution were not due to a lack of societal condemnation of the event, which was uniformly

¹³ 4&5 Phil.& Mary C.8. *The statutes at large conteyning all such acts which at any time heretofore haue beene extant in print from Magna Charta, vntill the sixteenth yeere of the raigne of our most gracious soueraigne lord Iames*, 2 vols (London: 1618) STC (2nd ed.) / 9305.7, 99857436 <<http://eebo.chadwyck.com>> [accessed 20th December 2010] (1. p. 1179) British Library.

acknowledged as a heinous act, but rather, it seems, through doubt as to when rape should, or could be legally prosecuted, and to exactly under which circumstances it could be said to have occurred.

An example of this uncertainty is demonstrated by the case of W.D., the Scotsman tried in 1571 for 'feloniously' ravishing a girl of seven. The case raised important questions about the 'alien' status of the accused, and was to have a peculiar bearing decades later on the legal arguments regarding the status of Scots in England after the Scottish King James VI acceded to the English throne.¹⁴ The case also raised some doubt regarding the validity of the indictment, the reason for which we can only assume, although it is likely that a technicality in the definition of terms was the probable cause. As the law reporter Sir James Dyer observed, although W.D. was found guilty on "the good evidence of divers women, matrons," it was nonetheless unclear whether a charge of felonious rape could be brought. According to Dyer, the Court "doubted of rape in so tender a (a) child. But if she had been nine years and more, it would have been otherwise."¹⁵ It is possible that Dyer makes reference here to the wording of the Statutes of Westminster, the principal authority for the sixteenth-century laws on rape, which distinguishes between women "of age" or of "full age," and young girls "within age" (i.e. generally between nine and twelve years) for the purposes of consent, but omits reference to children under nine.¹⁶ This wretched anomaly in the law remained unchanged until the 1576 Statute, which made specific provision in relation to girls of less than ten years, and also denied the legal fiction of benefit of clergy for all those indicted for rape. Obscure though it is through lack of detail, the case of W.D.

¹⁴ Mortimer Levine, "A More Than Ordinary Case of 'Rape', 13 and 14 Elizabeth I," *The American Journal of Legal History*, 7.2 (1963), 159-164 in *JStore* < <http://www.jstor.org/stable/844253> > [accessed 20th December 2010] (p.162). I am indebted to Levine's informative article for the following analysis of the case.

¹⁵ See Levine, "A More Than Ordinary Case of Rape," p. 162.

¹⁶ Levine, "A More Than Ordinary Case of Rape," pp.162-163.

does say something of the early modern judiciary's idiosyncratic and uncertain approach to rape, and is also suggestive of the haphazard nature of criminal prosecutions for rape in early modern courts.

In this relation it is claimed that the sixteenth-century legal system was in a general sense unsystematic and disorderly. In the words of one modern historian, the early modern law is "a formless, confused jumble of undigested particulars, successfully resisting all efforts at simplification or systematic statement."¹⁷ It is clear that some early modern lawyers would concur with this view, and were themselves aware of the lack of organisation in the laws they sought to understand. As late as 1638 this point was made in a speech at Gray's Inn by Sir Richard Keble, who paraphrases the opinions of Sir William Staunford voiced decades earlier in the late 1500's:¹⁸

This knowledge is planted soe farre off, the iorneye thereunto soe Exceedingly longe...the wayes and pathes soe rugged and unpleasant, that most choose, rather than to rest in want of this knowledge than to undergoe the wearsome labour in the sadd shadowes of their studies to find it out. And doe many tymes, turne themselves to delights of youth.¹⁹

This seeming lack of systemisation was due in part by the arrangement of overlapping jurisdictions that included manor, borough and county courts. Matthew Hale, writing a history of English law in the latter half of the seventeenth century describes these several sites of legal jurisdiction in symbolic terms:

the said Common Law assumes divers Denominations, yet they are but Branches and Parts of it; like as the same Ocean, tho' it may times receives a different Name from the Province, Shire, Island or Country to which it is contiguous, yet these are but Parts of the same Ocean.²⁰

¹⁷ Prest, *The Inns of Court*, p.142.

¹⁸ Prest, *The Inns of Court*, p.143.

¹⁹ Prest, *The Inns of Court*, p.143, citing William Staunford, *An Exposition of the Kinges Praerogative* (1607, 1st publ. 1567), sig. Aiiii: Bodl. MS, Rawlinson C, 207, f. 185.

Hale's allusion to unity characterises the law as a broadly synchronized system, a suggestion belied by the gaps and anomalies in the historical criminal record which lead historians to generally agree on the unreliability of forming conclusions based on quantitative data for individual categories of offence.²¹

While the difficulty of recovering accurate statistics for rape is in part because of the complications in its classification, it is, nevertheless, fairly safe to assume from studies of the archival material that there was a proportionate lack of successful prosecution of rape in relation to cases brought to the criminal court. Perhaps unsurprisingly in view of the jurisdictional fluidity of the early modern legal system, rape does feature comparatively strongly in the records both of the church and the manor courts as historian F. G. Emmison's study of sixteenth century prosecutions demonstrates. The assize records for Elizabethan Essex, for example, show a low incidence of rape, while the archdeacon's court for the same period records twenty-three cases of rape or attempted rape.²² This suggests that recourse to law for the punishment of sexual crime was a relatively unsystematic process that permitted punishment of rape to be legally pursued through jurisdictions other than that of the quarter sessions or the assizes. Needless to say, such jurisdictions were limited in their power with regard to sentencing.

As Emmison's investigation reveals, the Church's remit to penalise sexual offences appears to have provided to some degree a means for women to complain of rape. The Church was intrinsic to community life and the ecclesiastical courts were generally a

²⁰ Matthew Hale, *The History of the Common Law of England*, ed., Charles M. Gray (Chicago: University of Chicago Press, 1971), p.18.

²¹ J.A. Sharpe, *Crime in Early Modern England 1550-1750* (London and New York: Longman, 1999), p.11.

²² F.G. Emmison, *Elizabethan Life: Morals & the Church Court*, Essex Record Office Publications, 63 (Chelmsford: Essex Record Office, 1973), p.44.

more accessible means of making an allegation of sexual wrongdoing than the higher courts, where a successful prosecution of an alleged rapist was a much more complex process.²³ As in other acts of crime against the person, the onus was on the victim or her family to initiate legal proceedings and required that the plaintiff had the means to travel to court. Bringing a criminal trial first required the co-operation of the local community, and the decision as to whether a suspect should be confined depended on the availability of others in the neighbourhood to provide depositions and to appear as witnesses. From the perspective of the accused, bail was contingent on the pledges of his supporters who were required to guarantee his appearance in court. After the initial examination of the suspect by the local justice, and before the question of his guilt or innocence could be established by the petty, or trial jury, any indictment had first to be approved by a majority of grand jurors, who had to pass the indictment as *billa vera* or a true bill. Their rejection of the case at this stage resulted in a statement of *ignoramus* or “we do not know,” and the indictment would proceed no further.²⁴ It follows that sentencing by the judge or justice was the final stage in a protracted process in which a successful prosecution for a rape crime depended to some extent on the individual victim's familial, financial, and social circumstances.

It is easy to see how the involvement of neighbours and the local community in the process of prosecution could work both for and against the plaintiff or defendant in the case. In the interests of justice, as much in the early modern context as in our own, the doubts as to whether rape allegations are genuine need to be considered in relation to the evidence that false accusations of rape were, and still are made. In some senses, the early modern local community were charged with the responsibility for deciding the authenticity of rape allegations by committing their support to one or other of the parties

²³ See Cynthia Herrup, “Law and Morality in Seventeenth Century England,” *Past and Present*, 106.1 (1985), pp.102-123.

²⁴ Herrup, “Law and Morality in England,” p. 107.

concerned. The nature of community life meant that the importance for both men and women to maintain their good name and reputation was paramount. Women in particular were vulnerable to suspicion and accusations of alleged sexual infidelity. As Tim Stretton explains: “the power of the accusation of female adultery was such that a single instance of alleged infidelity could provide grounds for separation and the denial of maintenance,” whilst the revelation of matters in open court could blemish a woman’s reputation.²⁵ In the literary context, Chaucer explores this concept of the power and hypocrisy of community condemnation and that of the potential vilification that a victim of rape may attract as the result of her violation in his version of Lucretia’s story. Although Chaucer’s Lucretia is blameless, she commits suicide after those around her say that they will forgive her. Her sense of shame is borne out because the statements of others suggest to her that there *is* something to forgive.²⁶

The social structure of early modern community life also points to the difficulties in prosecuting rape committed by a social superior when categories of wealth and position were frequently as divisive as those of gender for early modern woman.²⁷ Nevertheless, whilst rank presumably provided privileged women with protection from the kind of opportunistic sexual assault suffered by the poor, upper class marriage contracts made for economic or political purposes suggest a potential form of legalised sexual coercion sanctioned both by the family and the courts. The Church had traditionally insisted on the mutuality of the marriage agreement, and, indeed, Luther recognized that forcing a woman into a marriage was tantamount to rape but suggested

²⁵ Stretton, *Women Waging Law in Elizabethan England*, pp.196, 224.

²⁶ Andrew Galloway, “Chaucer’s Legend of Lucrece and the Critique of Ideology in Fourteenth-Century England,” *English Literary History* 60.4 (1993), 813-832 in *JStore* < <http://www.jstor.org/stable/2873318> > [accessed 20th December 2010] (p.820); Geoffrey Chaucer, “The Legend of Good Women,” *The Complete Works of Geoffrey Chaucer*, ed. by W.W.Skeat, 2nd edn, 4 vols (Oxford: Oxford University Press, 1900) 3.5 in *The Online Medieval Classical Library* <<http://omacl.org/Good>> [accessed 20th December 2010]

²⁷ Nazife Bashar, “Rape in England between 1550 and 1700, pp.36-37.

that this could be avoided by persuading her "to let it pass for then it becomes a true marriage through her consent."²⁸ This raises the issue of how a woman's consent should be defined, and whether it is the consent of the will, or simply her ceremonial assent that is decisive in determining her compliance. A memorable dramatisation of the issue is illustrated during the closing scene of Shakespeare's *Measure for Measure*, when Isabella's mute response is striking and her verbal affirmation to the Duke's offer of marriage is conspicuously absent. In view of Isabella's status as postulant and her voiced desire for perpetual abstinence, we are invited to ponder to what extent the Duke's proposal of matrimony is welcome, and how far it differs from Angelo's suggestion that Isabella yield up her body and "fit her consent" to his will (2.4.161-164, 5.1. 528-30).²⁹ In the legal context, references to female 'consent' are ostensibly self-explanatory when they are in fact weighed with the cultural ambivalence attached to concepts of female sexual agency.

Characterised by their brevity, most allusions to rape in early modern legal texts merely refer with little elaboration to the various statutes that deal with the subject. In the texts of Edward Coke and Thomas Edgar however, references to the narratives of mythic or biblical figures introduce the question of the woman's (non) consent, and help to locate the meaning of rape in the human context rather than solely in terms of legal rulings. An explanation for lawyers' use of these dramatic tales is, perhaps, that like all educated young men, members of the legal profession developed an awareness of the authority of the classical rape fiction during boyhood. Classic stories were deemed a reliable means for understanding the characteristics of rape, and so in the same way that

²⁸ Barbara J. Baines, *Representing Rape in the Early Modern Period*, *Mellen Studies in Literature: Jacobean Drama*, 106 (Lewiston, NY: Mellen Press, 2003), p. 29, citing Martin Luther, *Luther's Works*, ed. by Jaroslav Pelikan and Helmut T. Lehmann, 55 vols (Philadelphia: Concordia and Fortress Press, 1958-85), 46. 307-308.

²⁹ See Katherine Eisemann Maus's introduction to the play for an interesting discussion on this point in *The Norton Shakespeare*, pp. 2025-2027.

our own resilient legal fictions have become “woven into the fabric of the law” so the ancient rape narratives became authoritative examples.³⁰

Legal Fiction: good / bad fiction and interpretation

Literary and visual representations of the rape of Lucretia, together with those of the abduction of Helen from Sparta, and the seizure of the Sabine Women reappear throughout the western canon. As established cultural myths, these familiar tales of human frailty and lust also found their way into early modern law books as illustrative of archetypal scenarios of rape. Presumably taken to be either hypothetically, or literally true for the purpose of analogy, these stories illustrate the fault line that exists, in the words of Subha Mukherji, “between imaginative constructs and the contradictions of reality,” and work as a form of legal fiction.³¹ For the purposes of this thesis my definition of ‘legal fiction’ differs from the typical elucidation of the term. Early modern lawyer Sir Henry Finch provides a more traditional interpretation and glosses it thus: “a feigned construction, when...the law construeth a thing otherwise than it is in truth.”³² Finch refers most obviously to the occasionally fictive construction of legal rules: that of the manipulation of the statute in felony cases through the fiction of benefit of clergy for example.

Lawyerly distinction is made between legal fictions on the one hand, and cavillation on the other based on purpose, as Ian Maclean explains. Legal fictions are intended to advance the common good and facilitate equity, while cavillation is prompted by self-

³⁰ Posner, introduction to *Law and Literature*, p. 5.

³¹ Mukherji, *Law and Representation in Early Modern Drama*, p.231.

³² Sir Henry Finch, *Law or a discourse thereof in Four Books*, 1.V. p.66.

interest and constitutes deliberate evasion.³³ As an example of the former, the benefit of clergy rule permitted the judiciary to use their discretion when sentencing first time felons and apply the death penalty only when they thought it necessary, often in cases of recalcitrant repeat offenders. Legal fiction thus in this sense provided an equitable alternative to the ‘letter of the law.’ My interest focuses here, however, on the fictions that arise among language, meaning and context. These pertain to the interpretative strategies of lawyers in which the ideological premises that language and context serve may be obscured.³⁴ This kind of fiction complicates an oft-held concept that law represents a discrete, self-governing discipline ordered by a language which is, in Peter Goodrich’s words, ostensibly a “written code, which if correctly...interpreted forms a series of necessary truths;” instead it demonstrates law and art’s reciprocity and, as Goodrich claims, demarcates the law as a social discourse bound by literature’s rhetorical effects and thus the impersonations of fiction.³⁵ Although most often quite distinct then from misrepresentation, or cavillation in the mind of jurists, legal fiction as the repetition of well known narratives in which the proof of gendered subjectivities may supposedly be read is, I suggest, similarly pervasive in its effects. Acting to reify the imagined interiorities of identities inscribed in historical texts and works of classic literature, the tales of female abduction and violation I discuss here present a series of paradigmatic scenarios for the reading of rape which, in their contextual specificities, dictate the terms in which rape itself may be understood. Before examining the legal texts in which these references appear, it is useful first to consider how rape narratives

³³ Ian Maclean, *Interpretation and Meaning in the Renaissance: The Case of Law* (Cambridge: Cambridge University Press, 1992), p.138.

³⁴ See introduction, pp. 14-17.

³⁵ Lorna Hutson and Victoria Kahn, introduction to *Rhetoric and Law in Early Modern Europe* (New Haven: Yale University Press, 2001), p. 3, citing Peter Goodrich, *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis* (Basingstoke, 1987), pp. 205-206.

figured in the cultural imagination and how early modern lawyers may have conceived of the classical models of epic rape to which they were drawn.

Mythopoeic Narratives of Rape

Early modern readers recovered the history of the mythic Helen of Sparta, “the bride of spears and blood,” so named by Aeschylus in his Greek tragedy *Agamemnon*, together with that of the Roman matron Lucretia, through a web of historical and mythographic material.³⁶ The plays of Aeschylus were accessible to a European readership from the early sixteenth century, while a translation of Aeschylus’s works by Thomas Stanley was published in England in 1663.³⁷ The ancient story of Troy was first recorded in writing in Homer’s *Iliad*, although Helen is a figure of even more extraordinary antiquity with connections to the oral traditions of Indo-European fertility worship and the ancient cult of the feminine principle.³⁸ Helen’s history principally came down to the Renaissance by way of the Homeric account of the Troy legend, which was notably popularised in the late sixteenth and early seventeenth centuries through the publication of George Chapman’s translations of the *Iliad* and *Odyssey*.³⁹ Helen’s myth resonates in accounts of other historical, mythological, and fictional figures with equally bloody stories. Lavinia, for example, the tragic heroine of Shakespeare’s *Titus Andronicus*,

³⁶ *Aeschylus I: Oresteia*, trans. by Richard Lattimore (Chicago: Chicago University Press, 1953), pp. 681-687.

³⁷ *Encyclopaedia of Ancient Greece*, ed. by Nigel Wilson (New York: Routledge, 2006), p.17; Thomas Stanley, *Aischylou tragodiar epta Aeschylī tragoediae septem: cum scholiis Graecis omnibus: deperditorum dramatum fragmentis / versione & commentario Thomae Staneii* (London: 1663).

³⁸ For the origins of the Helen myth see M.L. West, *Immortal Helen* (London: Bedford College, 1975).

³⁹ These include: *Seauen bookes of the Iliades of Homere, prince of poets, translated according to the Greeke, in judgement of his best commentaries by George Chapman* (London: 1598), *Achilles shield translated as the other seuen bookes of Homer, out of his eighteenth booke of Iliades. By George Chapman Gent* (London: 1598), *Homer prince of poets: translated according to the Greeke, in twelue bookes of his Iliads, by Geo: Chapman* (London: 1609), *Homer’s Odysses. Translated according to the Greeke by, Geo: Chapman* (London: 1614/1615), *The whole works of Homer: prince of poets in his Iliads, and Odysses. Translated according to the Greeke, by Geo: Chapman* (1616).

whose violation prompts the dissolution of a degenerate government, and Lavinia's classical precursor, the mythic Philomela of Ovid's *Metamorphoses*, whose rape is grotesquely revenged in acts of murder and dismemberment.⁴⁰ Shadowing Helen, who is characterised in Shakespeare's *Troilus and Cressida* as figuratively daubed with the blood of Trojan youth, Lucretia's story, too, was likely to have been remembered by early modern readers of Livy's popular Roman history as the aristocratic wife whose rape prompted a bloody revolution and subsequent overthrow of the Roman monarchy. Together, these classical figures and their more modern descendants share a common identity as catalyst for the forces of destruction and transformation, but Helen and Lucretia are distinct in that unlike many of their counterparts they come to signify the uncertain sexual morality of 'woman.'

The moral ambivalence attached to these figures in popular literature can be attributed, in part, to the classical and medieval sources from which they were drawn, and a large corpus of material was available to early modern readers. For example, some of the staple antecedents for early modern tales of Troy – Homer's *Iliad* and *Odyssey*, Virgil's *Aeneid*, and Ovid's *Heroides* – were augmented by lesser known works, notably those of Euripides, which were published in various editions, including the Aldine publication of 1503, which contained all the Greek texts apart from *Electra*, and a subsequent complete volume published in Basle in 1537. In addition to these, Michael Neandrus's *Aristologia Euripidea Graecolatina* (1599) offered a plot summary of each of Euripides' plays.⁴¹ Alternatively appearing as a wanton with a highly developed sexual appetite, and as a maligned and virtuous innocent, the Helen in Euripides' texts becomes a composite of 'woman.' She is the sorceress of the *Orestes*,

⁴⁰ See Katherine Eisaman Maus, introduction to *Titus Andronicus* in *The Norton Shakespeare*, pp. 372-373. Maus points to the way in which the story of Lavinia's rape is an amalgam of epic rape narratives.

⁴¹ See Diane Purkiss, introduction to *Three Tragedies by Renaissance Women* (London: Penguin, 1998), xxv.

and in *Helen*, the play that takes her name, the innocent celestial being spirited away by Hermes during the war on Troy. She can be read either as a human and base seductress as in the *Women of Troy*, or, in *Helen*, the play that takes her name, as an idea, an illusion for which the Greeks and Trojans went to war.

Allusions to the Troy myth feature in both major and minor literary works of the sixteenth century: Spenser, for example, writes of his reliance on the “antique Poets historical” – the texts of the “*Ilias*, *Odysseis*,” and *Aeneid* – and Helen appears in Book III of *The Faerie Queen* as the wanton ‘Hellenore,’ whilst the lesser known works of Peele’s *Araygnement of Paris* (1584) and *Tale of Troy* (1589) introduce a later Ovidian element of pastoral and myth attributable to the *Heroides*.⁴² Helen’s duality, either as an earthly creature, or as an allegory of the creative/destructive nature of the cosmos is central to her identity in classical literature. She is classically defined in the *Iliad* as the handmaiden of Aphrodite, and thus is commonly associated with the powers of seduction and the forces of human lust.

Similar themes of violence and illicit sexuality shape the classical story of Lucretia found in Livy’s history of Rome and Ovid’s *Fasti*, which each present an account of the events on which Shakespeare’s celebrated poem *The Rape of Lucrece* is founded. The Roman story had sparked intense conjecture in the work of medieval intellectuals, who were interested in the nature of Lucretia’s private consciousness, her culturally defined identity, and the ethical and legal questions that her story raised. Medieval English scholars re-examined this historic account of male sexual transgression and questionable female virtue in light of Augustine’s teachings and failed to reach a

⁴² Edmund Spenser, “A letter of the Authors,” in *The faerie queene Disposed into twelue books, fashioning XII. Morall virtues* (London: William Ponsonbie, 1590), STC (2nd ed.) / 2308, 99900639 <<http://eebo.chadwyck.com>> [accessed 20th December 2010] (p.592) Folger Shakespeare Library.

consensus, while Italian texts from the late fourteenth century onwards demonstrate a lively interest in the moral dilemmas of the central female character.⁴³

In spite of clerical damnation of these potent sexual melodramas as mere fables and histories and “as filthy as the heart can think,” references to them still found their way into the scholarly legal works of early modern common lawyers.⁴⁴ In a section of his magisterial work on the common law, *The third part of the Institutes of the laws of England*, Sir Edward Coke glosses his perceptions of ravishment in terms of the ill-fated Lucretia, and conceptualises the crime within the context of the Roman story:

It is read in story, that chaste Lucretia being ravished, she was found in extream heaviness, and it was demanded of her, *Salva?* (Is all well?) She answered *Quomodo mulier salva esse potest laesa pudicitia?* (Far from it: for what can be well with a woman when she has lost her honour?) And yet therefore it is truly said, *Duo fuerunt, & unus commisit adulterium.* (There were two and only one committed adultery)⁴⁵

Coke’s allusions to literature are not unusual in *The Institutes*, and he “ornaments his style” on several occasions with references to Chaucer.⁴⁶ *The Institutes* were published in the mid seventeenth-century, but it is generally held that much of their content relied on Coke’s *Reports*, which Paul Raffield notes were compiled during the late sixteenth

⁴³ Donaldson points to Machiavelli’s *Mandragola* (c 1518) and a letter written by Aretino to a friend in 1537 in which he speculates on the foolhardy nature of Lucretia’s sexual restraint. See Donaldson, *The Rapes of Lucretia*, p.89, 182, n. See also “Declamato Lucretiae,” in Stephanie H. Jed, *Chaste Thinking: The Rape of Lucrece and the Birth of Humanism* (Bloomington: University of Indiana Press, 1989), pp. 145-152, and Galloway, “Chaucer’s Legend of Lucrece and the Critique of Ideology in Fourteenth Century England,” p.820.

⁴⁴ John S.P. Tatlock, “The Siege of Troy in Elizabethan Literature, Especially in Shakespeare and Heywood,” *PMLA* 30.4 (1915) 673-770 < <http://www.jstor.org/stable/456975> > [accessed 20th December 2010] (p.679), quoting Tyndale, “Obedience of a Christian Man,” *Works* (London: 1831), 1. p.196.

⁴⁵ Brackets mine. Sir Edward Coke, *The third part of the Institutes of the laws of England*, ch.1, p. 60. Translation provided in Barbara J. Baines, “Effacing Rape in Early Modern Representation,” p.96, n.

⁴⁶ Lillian Herlands Hornstein, “Some Chaucer Illusions by Sir Edward Coke,” *MLN* 60. 7 (1945), 483-486 in *JStore* < <http://www.jstor.org/stable/2910204> > [accessed 20th December 2010] (p.483).

and early seventeenth centuries, and which were most likely circulating in manuscript form before publication.⁴⁷

Another legal text that appears to have had an earlier inception, that of *The Lawes Resolutions of Women's Rights*, also interweaves allusions to classic tales of rape with legal concepts. The author, Thomas Edgar, refers to 'rape' in mythological terms and alludes to the fantastic creatures of myth, the bulls and centaurs that have allegedly forsaken their earthly masculine shapes for love:

And now joines in the second rape by abduction where
in avarice is as great an agonie as carnality, also some
thing wiser in avoiding danger, now men turned them
selves for loves sake in to Centaurs first, and tooke on
them the shape of Bulls afterwards (*L.V. XXV.383*).

In the section of the text that deals with ravishment, the figures of Lucrece, Helen, and the Sabine women form the framing reference for the author's discussion and he conceptualises these crimes in relation to the stories of these legendary women.

Lawyers' literary turn of mind was, of course, not unexceptional among the men who inhabited the Inns of Court, where an extraordinary interdisciplinary culture thrived, and where the liberal arts and the study of law were embraced in equal measure. The Roman story would have been a potent one for these men, not least because English canon law drew on the Roman law of Justinian, as did continental legal systems. Studies in early modern reading practices have shown that the reading of Roman history was highly popular and was recommended reading both for soldiers, and also for 'politiques,' as a note in Henry Wotton's commonplace book indicates.⁴⁸ Likewise, in

⁴⁷ Paul Raffield, "Contract, Classicism, and the Common-Weal: Coke's Reports and the Foundations of the Modern English Constitution," *Law and Literature* 17.1 (2005) 69-96 (p.72).

⁴⁸ See Lisa Jardine and Anthony Grafton, "'Studied for Action': How Gabriel Harvey Read his Livy," *Past & Present*, 129 (1990), 30-78 in *JStore* < <http://www.jstor.org/stable/650933> > [accessed 20th

the marginal notes of Gabriel Harvey's volume of Livy, one entry sees Harvey acknowledging the unmatched qualities of Aristotle's *Politics*, *Oeconomics*, and *Ethics*, but musing on how much better even Aristotle could have been had he only known Roman history.⁴⁹ Myth was invested with an authority not dissimilar from that of ancient history, and early modern legal arguments based on Neoplatonic theories proposed that myth and fable provided means of uncovering veiled truths in allegorical or figurative manner, so that myths, even if considered literally untrue, were taken to contain subtle truths.⁵⁰

While it seems, then, that in the minds of early modern readers the ancient texts were considered a reliable means to recover the truths of human interaction, the answer to the question as to exactly what, or to whom these authors refer when they invoke the protean identities of the mythological Helen or the legendary Lucretia by way of example, remains unclear. Indeed, it is the issue of signification that becomes the stumbling block for Thomas Edgar in his discussion of rape in *The Lawes Resolutions of Women's Rights*. In the second section of his tract "On Rape," entitled "Ravishment in Two Sorts," Edgar attempts to clarify real distinctions in the legal category 'ravishment' in relation to the cases of Helen, Lucrece, and the Sabine women and in so doing uncovers the uncertainties that existed in this period in relation to the legal assessment of rape (*L.V. XX, XXI. 377-378*). In part this can be attributed to the slipperiness of language. In pondering the difference between 'ravishment' and 'ravishment with force,' Edgar discusses the ambiguities of their classification – uncertainties that are also discussed by lawyer William Lambarde in the 1599

December 2010] (p.31, n.), citing L.P. Smith, *The Life and Letters of Sir Henry Wotton*, 2 vols (Oxford: 1907), 2, p.494.

⁴⁹ Jardine and Grafton, " 'Studied for Action,' " p. 61, citing T. Livii Patavini, *Romanae historiae principis, decades tres, cum dimida* (Basle, 1555) p.273, deposit of Lucius Wilmerding Jr. in Princeton University Lib. Contains Harvey's notes made during the period 1568-90.

⁵⁰ Ian Maclean, *Interpretation and Meaning in the Renaissance*, p.138.

publication of his *Eirenarcha: or of the Office of Justice of peace*.⁵¹ Perhaps these difficulties are unsurprising in view of the way in which rape narratives had developed into a form of disputation in schools – particularly the story of Lucretia, who had been a subject of scholastic debate since medieval times – and used to exercise skill in the art of persuasion. Quintilian's *Declamations* provided a model; in this, students exercised their wits on preparing *pro* and *contra* arguments on what were sometimes lurid themes. These oratory exercises formed the basis for the student's advanced argument, which developed into a Declamation of “terse and polite Discourse” fashioned on the examples provided by great classical authors.⁵² Forensic argument was acknowledged as the way to discover truth and thus it seems that the verdict in Lucretia's hypothetical case was ever subject to discussion, and, moreover, was perhaps reached in relation to which speaker had best mastered the skills of oratory.

It is clear that early modern jurists inherited a language and literature of rape that compounded the perplexity surrounding rape's legal and moral definitions. The dissimilar obsolete meanings of rape are “rapine, plunder, and to seize and carry off,” and also “to ravish or transport, as with delight.”⁵³ Various early modern usages of ‘ravishment’ to denote rape are clear, but the term is equally used to denote a mystical, spiritual or religious experience. Both Chapman and Sidney use the expression to describe how music or poetry can transport the listener and seduce their senses, whilst Shakespeare uses the word interchangeably in the *The Rape of Lucrece*.⁵⁴ This linguistic instability appears to contribute to an early modern confusion

⁵¹ William Lambarde, *Eirenarcha: or Of the office of the Justice of peace in four bookes* (London: 1599), STC (2nd ed.) / 15169, 99838063 < <http://eebo.chadwyck.com> > [accessed 20th December 2010] (bk.2, ch.7, p.253 r) Bodleian Library.

⁵² John Warr, “Translator to the reader,” *The declamations of Quintilian being an exercitation or praxis upon his XII books concerning the institution of an orator*, trans. by John Warr (London: 1686), Wing / Q224, 12375903 < <http://eebo.chadwyck.com> > [accessed 20th December 2010] (A5 r.) Harvard University Library.

⁵³ *Chambers Twentieth Century Dictionary*, ed., A.M. McDonald (Edinburgh: Chambers, 1972), raping: ravishing, delighting (obs). [probably L. rapere, to snatch, confused with rap]; rap, to snatch: to grab: to carry away in spirit or with joy (Shak.).

of rape with seduction. Indeed, although Edgar condemns rape as a heinous crime, we have seen that he also at one point equates rape with its representations in myth and reasons that for women rape is sometimes “a greater astonishment than damage (*L.V.XXV. 383*).” Edgar's discussion of the instability of the term ‘ravishment’ identifies the use, or misuse of terms resulting from the mutability of language, but in revealing this linguistic uncertainty, he also points to the confusion in early modern cultural concepts of rape, a confusion that is both reproduced in literature, and in turn propagated in the law texts. In the examples given by Coke and Edgar the problem is manifest in the models of femininity to which they refer, which are by definition signifiers of the uncertainty of female virtue. Interestingly, quite apart from the categorisation of what constitutes rape in legal terms, the authors of my examples come to differing conclusions regarding the moral guilt of Lucrece. Thomas Edgar denotes Lucrece's innocence even if her rape does not quite represent the “right ravishment” acknowledged by the law (*LXX. 377*), while Sir Edward Coke's cryptic comment on Lucrece – “*Duo.fuerunt & unus commisit adulterium*” (that there were two and only one committed adultery) – leaves the question open as to exactly *who* was the adulterer, and also seems to suggest something of the way he thought about rape in relation to the cases he cites from the court record.⁵⁵ Defined by early modern lawyers as a discourse formulated by right reason, early modern law is here fashioned in the legal text via reference to literary authorities that introduce diverse and often contradictory meanings of rape, and which subvert a clear analysis and instead contribute to the obfuscation of ‘rape’ as a legal category. Elizabeth Perry Hodges’ observations on the contingency of

⁵⁴ Chapman, *Homer's Odysseys translated according to ye Greeke*, (bk 10, p.151); Sir Philip Sidney, *Defence of Poesy* (1595) in *The Norton Anthology of English Literature*, ed. by M.H. Abrams, 6th edn, 2 vols (New York: Norton, 1993), I, pp. 479-500 (p.481).

⁵⁵ Coke, *The third Part of the Institutes*, ch..11, p.60. See also Baines, “Effacing Rape in Early Modern Representation,” pp. 69-98. Baines points out that Coke's observation on Lucrece follows Augustine's interpretation.

legal language and the unfeasibility of conceptualising the law as an autonomous discipline are apposite here.⁵⁶ The notion of the law as comprising a discourse that is resistant to the rhetoric, style and decoration of literature is subverted by the lawyers' recourse to the legendary tale, the myth and the fiction. It seems then that in the early modern context the generic distinctions between 'literature' and 'law' are more opaque than we might think.

Law and Poetics

The tradition of law as a form of poetics has a classical beginning, and the close links between law and literature, and in particular, law and poetry, can be explained by the connections of poetry to law in the rhetorical tradition. Sometimes referred to as "versified rhetoric" or the "the second rhetoric," poesis, or the art of the word, was in some ways synonymous with the classical oratorical skills of the lawyer.⁵⁷ Poetry and law did not present a completely uncomplicated relation in this period, but their connections were readily accepted, and exploited, by sixteenth- and seventeenth-century humanist scholar lawyers. Promoting an interdisciplinary approach to the study of law and warning against the insularity of a discourse unmediated by scholarship, the philosopher lawyer Abraham Fraunce, for example, uses the playful idiom of a short twelve line verse to introduce his work, *The Lawier's Logike*.⁵⁸ The form and tone of the epigraph is similar to the dedicatory verses in *The Lavvyers Light* by Sir John Doddridge, who introduces his work in a similar vein.⁵⁹ To modern eyes these rhyming epigraphs can seem rather incongruous in sober law tracts, but they serve as reminder of

⁵⁶ See introduction, p.10.

⁵⁷ Grahame Castor, *Pleiade Poetics : A Study in Sixteenth-Century thought and Terminology* (Cambridge: Cambridge University Press, 1964), p.14.

⁵⁸ Abraham Fraunce, dedication "To the right Honorable, Henry Earle of Pembroke," in *The Lawiers Logike*, no sig.

⁵⁹ Doddridge, *The Lavvyers light*, sig. A.2.r.

the authors' links with the ancient institution of poetry and law, and help to locate these texts as part of the corpus produced by a fraternity of learned humanist lawyers who were educated in the ancient principals of law and literature.

Exerting a similar influence to that of European lawyers and notaries on the culture of early Renaissance humanism, English lawyers of the late sixteenth century are characterised as transforming law from craft "to a liberal art."⁶⁰ Fraunce provides the logic for this concept by indicating the similarity between the didactic principals of art and law: "An art is (as is law) a methodicall disposition of true and coherent precepts, for the more easie perceiving and better remembering of the same."⁶¹ This concept of the shared artistic status of law and poetics was sanctioned by Cicero's maxim that poetry was the principal civilising influence on humanity. Contemporary writers like George Puttenham, who with Fraunce promoted the importance of humanist scholarship, acknowledged Cicero's claim and pointed to the indissoluble link between poets and lawyers. In his *The Arte of English Poesie* (1589), Puttenham replicates the theory of art's power to shape morality by acknowledging poetry as pre-dating civil society (as opposed to issuing from it), and further claims that poets were the original lawmakers and the visionaries of political and legal discourse.⁶²

Both the status and endeavours of lawyer and poet were highly debated however. Exerting a major influence on Fraunce's work, and a 'renowned' poet as Fraunce declared, Philip Sidney nevertheless appears to have taken a rather more pragmatic approach to the law and distinguished the status of lawyers and poets in terms of their moral endeavour. In *The Defence of Poetry*, Sidney compares poets, who "endeavour to

⁶⁰ William J. Bouwsma, "Lawyers and Early Modern Culture," *The American Historical Review*, 78.2 (1973), 303-327 in *JStore*. < <http://www.jstor.org/stable/1861170> > [accessed 20th December 2010] (p. 308).

⁶¹ Fraunce, *The lawyers logike*, bk.1.ch.1, sig. B.ii v.

⁶² George Puttenham, *The Arte of English Poesie* (London: Richard Field, 1589), cited in Peter Goodrich, "Officium Poetae," *Liverpool Law Review*, 23.2 (2001), 139-152 in *Springerlink* <<http://www.springerlink.com.ezproxy.sussex.ac.uk/>> < doi.10.1023/A:1016038002250 > (p.142).

take naughtiness away and plant goodness even in the secretest cabinet of our soules,” with lawyers, who do not attempt to make men good but simply ensure that “their evil hurt not others.” Sidney reasons that the lawyer is merely necessary: “our wickedness maketh him necessarie, and neccessitie maketh him honorable.”⁶³ Reserving his greatest esteem for the poet’s moral stature, Sidney appears to advocate law as an honourable profession simply because it is a practical necessity. Sidney’s reasoning is suggestive of lawyers’ indeterminate moral status as mere administrators of the rule system presupposed by a temporal unitary authority. The questions of the relations between morality and legality were vexed. As J.A. Sharpe has observed, this period was one in which there was “an imprecise notion of the difference between crime and sin.”⁶⁴ The humanist drive was to justify the authority of the classical secular political past within the spiritual parameters of Christian doctrine and the result was a *milieu* in which a secular pragmatism co-existed in tension with humanistic Christian principle. This tension represents a conflict, as Bouwsma explains, between a lofty concept of law, in which the unruly human will could be coerced to conform to an ultimate vision of justice, and the practical resolution of morally ambiguous antithetical human interests.⁶⁵ Producing contention among lawyers since the sixteenth century, this issue, which Bouwsma notes men like Sir Edward Coke, “uneasily straddled,” suggests the lack of early modern consensus on whether law is either subordinate to the ultimate principals of divine authority, or part of the necessarily secular mechanism for dealing with the mutable pragmatic problems of society.⁶⁶ This is not to suggest that secularism is synonymous with a lack of belief, as Bouwsma makes clear, but represents a form of

⁶³ *Sir Philip Sidney’s Defence of Poetry*, ed. by Lewis Soens (Lincoln: University of Nebraska Press, 1970), p.16.

⁶⁴ J.A. Sharpe, “The history of crime in late medieval and early modern England: A review of the field,” *Social History*, 7.2 (1982), 187-203 in *informaworld* <<http://dx.doi.org/10.1080/03071028208567529>> (p. 188), cited in Stretton, *Women Waging Law in Elizabethan/England*, p.5.

⁶⁵ Bouwsma, “Lawyers and Early Modern Culture,” p.318.

⁶⁶ Bouwsma, “Lawyers and Early Modern Culture,” p.305.

godliness, “that stressed the inward quality of faith, contrasted it sharply with the world and its ways, and by emphasising the incongruity liberated secular life from direct religious control.”⁶⁷ Herein lies the difficulty attached to the duality of early modern definitions of rape both as a category in which opposing secular human interests were settled in relation to the legal rules, and also as one that encroached upon the preserve of conscience, God, and Church in its construal as sin. In the works that I examine this problem is often strikingly elided. Sir Edward Coke presents an untroubled view of the dual moral and legal implications of rape, and gets round any potential dichotomy by justifying his assertions with quotes from the Christian teaching of Augustine.

Presenting a slightly more troubled analysis, Thomas Edgar attempts to both rationalise the system inherited by early modern jurists, and also to negotiate his way around conflicting perspectives of rape. As a consequence, *The lawes resolutions of women's rights* stands out as the only early modern legal text that examines the categorical problems of rape in any depth, and the text provides valuable insights into the way in which one lawyer thought about the law and its practice in relation to sexual crime.

The Lawes Resolutions of Women's Rights

The Lawes Resolutions of Women's Rights is unusual in that it is the only early modern English law tract to discuss in detail the subject of law as it relates to women. Published in 1632, the author's address to the reader indicates that the revised text originated from one long deceased, which suggests a considerably earlier date for much of its composition. It is also noted that no law after the end of the sixteenth century is mentioned in the text, and it is thought most likely that the work was written during the

⁶⁷ Bouwsma, “Lawyers and Early Modern Culture,” p.322.

latter years of Elizabeth's reign.⁶⁸ Historian Wilfred Prest locates the work within a genus that sought to methodise the law in line with logical techniques derived from philosophy - Fraunce's *The Lawyers Logike* being another example - and suggests that these legal endeavours were a particular feature at Gray's Inn where Henry Finch, Abraham Fraunce, and also Thomas Edgar and Francis Bacon studied law.⁶⁹

Intended "for service to that sexe generally beloved and by the author held in venerable estimation," the preface to *The Lawes* indicates that the work is a form of legal reference text specifically designed for women. Purporting to offer protection from the consequences of ignorance, the treatise is couched in terms of a warning to those women whose lack of legal knowledge may "turn a mollifying heart to harm" when faced with the "faire promises" of unscrupulous men, who may also use "lying, violence and plaine strength of armes," to achieve their ends (*L.V. XX.377*). In spite of the author's address, his objective in relation to his intended audience seems less clear in the closing pages of his text when he reveals that the book stands to disprove claims of Englishmen's gross negligence towards their wives and daughters. The text stands as a rebuttal of these accusations and attempts to demonstrate the legal (masculine) care taken to protect the female sex. In his rebuttal Edgar makes a strong claim for the law's abhorrence of "brutish concuspience," which he attests is demonstrated by the punishment of unlawful female consent with a loss of inheritance (*L.V.XXI.377*). This is a rather baffling assertion that only becomes clear when considered in relation to the law's paradoxical configuration of abduction / rape and elopement as a single category for the purposes of prosecution (*L.V.XL.403*).

⁶⁸ Doris Mary Stenton, *The English Woman in History*, 2nd edn (New York: Schocken Books, 1977), p.61.

⁶⁹ W.R. Prest, "Law and Women's Rights in Early Modern England," *The Seventeenth Century*, 6. (1991) 169-187 (pp.174-5). Prest suggest that the original text was commenced in the 1580's and circulated in manuscript form for many years before publication. Bashar in "Rape in England," rather unusually attributes this work to Nicholas Brady.

It is in a corresponding literary context of the noble or gentlewoman that Edgar frames his interpretations of rape and ‘ravishment’ in relation first to the violation of Lucrece, and secondly in relation to the abduction and detention of Helen and the Sabine women:

There are two kindes of rape, of which though the one be called by the common people, and by the law itself, Ravishment, yet in my conceit it borrowth the name from rapere, but improperly, for it is not more but Species stupri, a hideous hatefull kinde of whoredome in him which committeth it, when a woman is enforced violently to sustaine the furie of brutish concupiscence: but she is left whers she is found, as in her owne house or bed, as Lucrece was, and was not hurried away, as Helen by Paris, or as the Sabine women were by the Romans, for that is both by nature of the word, and definition of the matter. The second and right ravishment, ...[(is) when anyone abducts a woman of honest fame, whether she be a virgin, a widow, or a nun, (and) it is (done) against the will of them in whose power she is] (L.XX.377)⁷⁰

The consequence of place in the author's analysis is significant. Abandonment after rape signifies alleged violation, while the second category of *Rapere*, to snatch or steal, applies specifically to crimes of abduction in which the male authority over a woman is supplanted or stolen. Removed from their homes, the Sabine women were later married to their Roman captors, while Helen was ‘snatched’ in the absence of Menelaus and taken away by Paris to Troy. In this configuration, Edgar follows the law as it relates to the patriarchal rights that characterise women as the property of their male kin. It is clear that while the category of rape as abduction, or the “right ravishment,” is unproblematic in terms of the criminality of the perpetrator(s), the other category of rape, which is subject to moral uncertainty, is not. What Edgar roundly condemns as *stuprum*, or illicit sexual relations, is in translation a nebulous concept. It refers both to

⁷⁰ Bracketed material is translation of a Latin phrase provided in Julia Rudolph, “Rape and Resistance: Women and Consent in Seventeenth Century English Legal and Political Thought,” *The Journal of British Studies*, 39.2 (2000) 157-184 in *Jstor* < <http://www.jstor.org/stable/175937> > [accessed 20th December 2010] (p.175).

consensual adultery, and also to a situation in which one person uses another to gratify his lust. As Diana Moses explains, while the term does not exclude the possibility of force, its usage without the phrase *per vim* or a form of *violo* renders it neutral and thus the complicity or resistance of the victim of *stuprum* is unclear, as we see in the case of Lucrece in several imaginative re-writings of her story.⁷¹ In his assertion that confusion exists regarding the true crime of ravishment, Edgar indicates both the parameters and preoccupations of the law, which are those of the illegality (not immorality) of rape and abduction. Although rape is unequivocally defined in legal terms as forced coition, the actual act of rape/ravishment, which is generally assumed to be the same event irrespective of whether the victim is abducted or not, undergoes re-definition and categorisation when interpreted as an illegal act. As demonstrated in the case of W.D., lawyers' concentration on the wordings of the Statutes and their efforts to divorce the widely understood concept of physical violation from the particular scenarios in which it could be deemed a criminal offence skews the moral imperatives to which the law lays claim.

The victims and perpetrators of events in the narratives of rape adopted by Edgar are of a respected rank within the societies that they inhabit and, as such, their stories are relevant to the crimes of ravishment and rape and the subsequent loss of honour and property that occurs within a similar stratum of early modern society. Edgar's use of these figures suggests that the preoccupations of the sixteenth-century legal community in relation to rape was much like that of their predecessors. Again, as we have seen from the examination of W.D.'s case in 1571, early modern lawyers largely relied upon the authority of the Statutes of Westminster, and a study of the thirteenth-century Statutes by legal historian J.B. Post establishes their effect as both symptom and cause of a

⁷¹ Diana C. Moses, "Livy's Lucretia and the Validity of coerced Consent," in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. by Angelike E. Laiou (Washington D.C.: Dumbarton Oaks Research Library and Collection, 1990), pp.48-49.

process that generally obscured the plight of the victims of rape in favour of elite familial concerns regarding property and inheritance.⁷²

The first Statute of Westminster in 1275 associated ravishment with abduction – “the king prohibiteth that none do ravish, nor take away by Force” – and dictated that this apply to under-age maidens regardless of consent, and also to matrons and maidens of age who withheld consent. In 1285 Westminster II raised the issue of a woman's consent after the event. In the words of the Statute, the ravishment of a woman became a capital offence “even though she consent afterwards.” This had the effect of removing what Post describes as “the time honoured concord of marriage” that legitimated elopement and, instead, provided the opportunity for legal action to be taken in the event of an unwelcome alliance.⁷³ Historian Nazife Bashar, points to this wording of the second Statute as particularly significant: “Punishment of Rape: of a married Woman eloping with an adulterer; for carrying off a nun.”⁷⁴ The concerns here were economic ones. Compensation to the parent house, together with three years’ imprisonment penalised those convicted of abducting a willing nun. The goods of an eloping wife could be returned to her husband and her dower lost. The emphasis on a singular classification indicates the legislative intent, which was to protect property rights and to discourage elopement where dynastic family interests were at stake, and further Statutes passed in 1382 and 1487 responded to the individual disputes of powerful families regarding the consensual alliances of their daughters.⁷⁵

The results of this were twofold and had both personal and political implications.

⁷² J.B. Post, “Ravishment of Women and The Statutes of Westminster,” in *Legal Records and the Historian: Papers Presented to the Cambridge Legal Conference*, ed. by J.H. Baker (London: Historical Society, 1978), pp. 150-164.

⁷³ Post, “Ravishment of Women,” p. 150, citing Westminster I, c.13 [1 SR 29]. Westminster II, c.34 [1SR 87].

⁷⁴ Bashar, “Rape in England between 1550 and 1700,” p. 30.

⁷⁵ J.B. Post, “Sir Thomas West and the Statutes of Rape, 1382,” *Historical Research*, 53. 127 (1980), 24–30. Wiley Online Library <<http://onlinelibrary.wiley.com.ezproxy.sussex.ac.uk/doi/10.1111/j.1468-2281.1980.tb01726.x/pdf>> [accessed 23rd December 2010] (pp. 25-26).

Post explains that “the emphasis on the law of rape was thus drawn away from the actual or potential victim of a sexual assault,” and cites the evidence of many failed appeals, in which poor women appealed affluent men, in order to support this. The second effect was to discount the concept of female agency since it was no longer relevant to the prosecution. This erosion of female autonomy, apart from ensuring family control over recalcitrant daughters, also served the political purpose of guarding against accusations from the church of the common law’s interference in the ecclesiastical matters of fornication and adultery.⁷⁶ A further consequence of the second statute of Westminster was the subsequent ambiguity in the term ‘ravishment.’ Post’s study of the language of appeals suggests that before Westminster II the language used in rape trials was explicitly that of forcible coition except in cases where *rapio* or *raptus* cohered with contextual details to acknowledge unforced abduction or elopement so that distinction could be made between the two.⁷⁷ A further statute in 1382 reinforced the wrongs of Westminster II, and this ambiguity, as we have seen, the author of *The Lawes* inherited.

A gradual change in the pattern of prosecution appears to have taken place during the latter years of Elizabethan rule however. Nazife Bashar’s study of Assize records shows that suits in the late sixteenth century brought by ordinary women against yeomen and labourers were becoming more frequent, and that little mention is made in these cases of economic issues. Bashar relates this to an escalating awareness of rape as a crime against the person rather than as an issue primarily related to property and inheritance. New Statutes of 1555 and 1597 treated rape separately from abduction, which had the indirect consequence of establishing abduction and rape as separate crimes, but as the attempts by Thomas Edgar to classify ravishment and abduction demonstrate, a great

⁷⁶ For a full discussion of these points see Post, “Ravishment of Women,” p.158.

⁷⁷ Post, “Ravishment of Women,” p.158.

kinship groups, the avengement of rape was not practiced in the most brutal forms without recourse to law. Sir Edward Coke cites without apparent censure the Old Testament stories of the bloody slaying of Shechem and Hamor by Dinah's kinsmen after her rape, and the murderous retribution for the sexual violation of Tamar. Coke invites the reader to “observe the end of the offender” in both cases, and the examples are presumably illustrative of vengeance as a form of natural justice.⁸⁰

As we have seen, Post's analysis of the medieval legal context suggests that the ruling that allowed marriage after ‘ravishment’ was merely a means to regularise familial disputes and normalise an illicit relationship. For some the second Westminster Statute that disallowed post facto consent was considered a remedy for the inadequacies of the first. This is borne out in *The Lawes* where the later ruling of Westminster II is interpreted as a “shrewd” Statute – “but what shall lusty leachers now doe: the more a woman is worthy to be won ... the more danger it is to meddle with her” – and acknowledged as a clever deterrent against the avaricious pursuit of women of property (*L.V.XXV.382*). The author's interpretation implies the seduction of the woman in being “won,” and ravishment here denotes both consensual defloration, and also seduction in terms of ‘leading astray’ and corruption. Although this ruling is approved, the author also discusses a less positive aspect of its implementation that demonstrates the effects of the ruling of Westminster II in human terms. Described as an invidious use of the statute, and accompanied by a warning that women can “not trust altogether to defense, or courtesies of law,” the author lays bare the torturous legal processes in the case of Elizabeth Venor (*L.V. XXXVII. 399*). Elizabeth's case demonstrates the use of the 1382 statute in the plotting of a scenario which resonates with those of classic rape narrative, and which in this case was one that was utilised successfully to serve the avaricious

⁸⁰ Coke, *The third part of the Institutes*, ch..11, p. 60; King James Bible, Genesis 34; II Samuel 13.

ambitions of others. An illustration of some of the details of the case will serve to indicate what the author meant.

The Case of Elizabeth Venor

The case of *Babington v Venor* concerned the inheritance rights of the widow of William Venor, a former warden of the Fleet prison und Keeper of the palace of Westminster.⁸¹ Elizabeth's rights to the property of her late husband were challenged by the heir of a male beneficiary, Robert Babington, who after Elizabeth and her issue was next in remainder. The indictment brought by Babington's heir, William, who was also Elizabeth's second cousin, was that of her abduction and rape by John Worth whom she had married after the death of William Venor. The charge against Worth was brought after Elizabeth ousted Babington and his relatives, who were attempting to take possession of the Venor property.

The details of Elizabeth's alleged abduction are recovered from a presentment made by a Middlesex grand jury in 1462. The account conforms to the conventions of rape narrative in terms of plot: kidnap of Elizabeth on a lonely heath by the perpetrator and his armed associates; abduction to an outlying location; seclusion; captivity; and forced marriage to the ring leader, John Worth. The scene resembles that of epic rape in its dramatic circumstances. Several of the eighteen men who were named in relation to the crime later appeared in court to answer the charge and were acquitted, while the absent John Worth was outlawed and took sanctuary at Westminster accompanied by Elizabeth. At this stage Elizabeth's story turns on the classic mystification of female consent that characterises the legendary narratives of rape and, in common with the epic scenarios that frame these stories, Elizabeth's alleged rape was also subject to the attentions of the ruler, Edward IV, his Lords of the Star Chamber, and the eminent

⁸¹ The details of the case as it appears in the court records and the background to events are recovered from C.H. Williams, "A Fifteenth Century Lawsuit," *Law Quarterly Review* 40 (1924), 354-364 in *Hein Online Law Journal Library* < <http://heinonline.org> > [accessed 20th December 2010]

lawmen of the age. Entangling Elizabeth in the vagaries of the laws of inheritance, the case was argued out with painstaking precision by the lawyers Littleton, Markham, and Young, as well as a host of others. The prosecution rested first on whether Babington could prove his authority as male next of kin to Elizabeth and thus be enabled to invoke the statute that would disinherit her. If however, it could be proved that Elizabeth was abducted and that she consented to Worth under duress (as her own counsel proposed) then she could be saved from losing her inheritance.

Elizabeth was summonsed to the Star Chamber where the King and the Lords offered to arrange her return home, an offer she refused and instead rejoined John Worth in sanctuary at Westminster vowing that Worth was her husband, and that she would not “forsake him.” Elizabeth’s inability or disinclination to agree that she was coerced into matrimony meant that her consent to her ‘ravisher’ was deemed “volantarie,” and therefore her inheritance forfeit and her occupation of her late husband’s lands illegal (*L.V.XXXVII. 399-400*). The extant details of the case leave unclear the real story of Elizabeth’s alleged rape. Alternative narratives are produced of abduction, rape, and indoctrination of a victim, or, alternatively, of the thwarted love of John and Elizabeth and an invidious but legally sanctioned intervention in a legitimate marriage. The comments of *The Lawes’* author seem to point to the latter. The case demonstrates the dichotomy between the ethical and legal issues that present in relation to rape law, which are in this instance the conflict between the moral imperative of the church in relation to the mutuality and sanctity of matrimony, and the socio-legal imperative of enforcing the rules of patrilineal rights. Elizabeth’s story was told to suit the preoccupations of the court and the legal narrative turns, much like those of the ancient rape stories and their early modern counterparts, on the issue of female consent.

Early Modern Literary Responses to the Issues of Consent: Shakespeare's *The Rape of Lucrece* and Peele's *Tale of Troy*

It will become evident that the literary examples of rape examined here both reflect and contribute to the ambivalence surrounding the subject of rape. Post maintains of the Westminster Statutes that “the collection of all types of ravishment of women under one simplistic chapter set a unique paradox which was never satisfactorily resolved.”⁸² This is borne out by the authorial efforts to interpret rape in *The Lawes*, in which Edgar draws heavily on the medieval legal authorities of Britton, Glanville, and Bracton, and the works of legal contemporaries Stanford and Coke, in addition to Old Testament Judaic law, literature, and myth. Norman Bryson's description of rape as “splintered, broken up, diffracted,” – featured in a “babel of voices” – is reflected in lawyers’ literary /legal interpretations of rape, as they attempt to order the language that informs the conceptual taxonomy of the crime, and to account for rape in terms of the competing moral, legal, and symbolic discourses that lay authoritative claim to its truth.⁸³

The Abduction of Helen

Early modern ideas about sexual acts were formed in relation to the religious, the mythic, and the legal aspects of their event. The mythic pagan past and its celebration of natural but profane sexuality provided an alternative concept of human sexual relations that ran counter to that of the Christian doctrine of original sin and sexual constraint and appealed to a mass psychology of mythic male potency. Thomas Edgar's references to myth in relation to rape, in which the metamorphosis of men “for love's sake,” lends them the ambivalent identity and sexual rapaciousness of the centaur, are part of a tradition of mythic symbolism that carries a subtext of the valorisation of male sexuality

⁸² Post, “Ravishment of Women,” p. 159.

⁸³ Norman Bryson, “Two Narratives of Rape in the Visual Arts: Lucretia and the Sabine Women,” in *Rape*, ed. by Tomaselli and Porter, pp. 152-173 (p.153).

(*L.V. XXV.383*). This concept of a manly virility is both naturalised and celebrated in the mythical rapes that either transform political regimes or act as the founding event of civilisations. A noteworthy example of this sexual ideology is found in Book Three of Spenser's *Faerie Queen* in which the narrator comments on a pictorial representation of Zeus / Jupiter's metamorphosis into a swan and his rape of Leda:

Then was he turned into a snowy swan,
 To win faire Leda to his lovely trade:

 Whiles the proud Bird ruffling his fethers wyde,
 And brushing his faire brest, did her invade;
 She slept, yet twixt her eyelids closely spyde,
 How towards her he rusht, and smiled at his pryde⁸⁴

Slumbering and acquiescent, the description of Leda indicates her feigned sleep and her half smile as demonstrative of her compliance. Here rape couched in mythic terms valorises male desire as the force that produces future heroes and heroines and thereby carries the weight of destiny.⁸⁵

Mythological rapes often present an allegory of divine creativity born of a rapturous physical and spiritual union, and the persona of Helen, herself the progeny from Leda's rape and related through her cosmic birth to the mysteries of procreation, is an apt representative of the multiple signification contained in these mythological scenarios. As mythic hybrid, Helen's numerous identities through the ages as mortal, goddess, eidolon / spirit, or whore mean that her name signifies either the feminine beauty of the natural world so celebrated by fifteenth-century Neoplatonists, or the locus of man's vulnerability to base and earthly passion and thus the annihilating force of human lust.

⁸⁴ Edmund Spenser, *The Faerie Queen*, bk.3. Canto 11. 280-88 in *The Norton Anthology of English Literature*, ed. by Abrams, I. pp. 516-734 (p.719).

⁸⁵ Helen Hackett, *Women and Romance Fiction in the English Renaissance* (Cambridge: Cambridge University Press, 2000), p.57.

In popular literature of the later sixteenth century Helen frequently becomes a discredited figure as the lustful counterpart to Aphrodite, as for example in her appearance as ‘Nell’ in Shakespeare’s *Troilus and Cressida*. Helen’s arrival in Act III of Shakespeare’s play is heralded with a description of her as “the moral Venus, the heart blood of beauty, love’s invisible soul (*III.1.30-31*).” This reference to the Neoplatonic ideal of beauty and divine love is juxtaposed with Helen’s entrance as ‘Nell,’ who in dalliance with Paris jokes with the bawdy Pandarus. Pandarus hails Paris and Helen with sycophantic complements of idolatry: “Fair be you, my lord, and to all this fair company/Fair desires in all fair measure fairly guide them—/especially to you, fair queen; fair thoughts be your fair pillow (*III.1. 42-45*).” The reiteration of ‘fair’ parodies the complement, and the pun on Queen/quean, like the diminutive ‘Nell,’ denotes ‘whore.’ Shakespeare’s Helen is here depicted as a bawd, tickling Pandarus and teasing him into singing a love ditty, which consists of standard sexual innuendo. Her trivial reference to love: “this love will undo us all. O Cupid, Cupid, Cupid (*III.1.100-101*),” is met with Pandarus’s parody of the pleasure of lovers in a mimicry of orgasm, which contributes to the salacious tone of a scene that invokes the image of the lustful Helen of Ovid’s *Heriodes*.

The trend of depicting Helen as morally ambivalent is also found in George Peele’s *Tale of Troy* (1589), in which Helen’s amatory exploits are examined in light of the letters that are supposedly exchanged between herself and Paris prior to their disappearance to Troy.⁸⁶ Various influences can be traced in Peele’s poem including the chivalric histories of Caxton’s *Recuyell of the Historyes of Troye*, and Lydgate’s *Troy Book*, but the primary source for the work is Ovid’s *Epistulae Heriodum*, versions of which were translated by Sir Thomas Chaloner (c.1560), and again by Turberville in

⁸⁶ George Peele, *Tale of Troy*, in David H. Horne, *The Life and Minor Works of John Peele*, ed. by Charles Tyler Prouty 2 vols (New Haven: Yale University Press, 1952), I. pp.183-202. All references are to the edition and hereafter cited in the text *TT*.

1567.⁸⁷ Peele suggests Helen's complicity in her seduction: "No sooner was King Menelaus gone/ But Helen's hart had tane so great a flame / As love increast with sound of Paris name (*TT. 163-64*).” It appears that there is some hesitation on Helen's part, but “after large disputes of right and wrong / what did to love and womanhood belong,” her love could not be “oreruled” (*TT. 169*). Love and desire are privileged here as the authority for a natural law of love, which transcends civil ceremony and conjugal virtue. A postscript to the work defers to Peele's “author,” who was most likely Caxton.⁸⁸ This addition reverses the textual evidence of the relationship between the lovers and claims instead that Helen's submission to Paris was forced thus reinstating the mystery of Helen's response:

My Author sayes, in favour of her name,
That through the worlde hath beene belide by Fame:
Howe when the king her pheere was absent thence,
A tale that well may lessen her offence.
Sir Paris tooke the towne by Armes and skill,
And carried Helen thence against her wil
Whom whether afterward she lov'd or no,
I cannot tell, but may imagine so (*TT. 4486-4493*).

The paradox of Peele's abrupt retraction can be explained in relation to the lack of closure in the *Heroides*. Ovid's epistolary form enables an exploration both of the complexity of Helen's emotions and her seeming intentions, but her final decision is unrecorded so that ultimately the exact nature of her abduction is open to question.

Peele's poem presents a tension between conventional Christian morality and the candid eroticism of his source, which celebrates a pagan world of sensory delight.

Ovid's Helen writes of her wifely chastity but voices her indecisiveness with the

⁸⁷ Lee T. Percy, *The Mediated Muse: English Translations of Ovid 1560-1700* (Connecticut: Archon, 1970), pp. 10-11. For the influences in Peele's work see John S.P. Tatlock, "The Siege of Troy in Elizabethan Literature," p.673.

⁸⁸ Tatlock, "The Siege of Troy," p.681.

thought: "Sometime receiued wrong / auailles the pacient much : / How blest were I, such force to byde / if Helens hap were such."⁸⁹ This indictment of female complicity demonstrated by Helen's request for rescue from an onerous virtue contributes to the pornographic subtext of Ovid's work. Recognized by Thomas Edgar as "the poyson of Ouid's false precept (*L.V.XX 377*)," which is found in the *Ars Amatoria*: "*vim lice appellant, vis est ea grala puellis*" (though they apply force, that force is pleasing to girls), the concept of women's false protestations of modesty and secret desires for their resistance to be overcome by force is formed in relation to the same mass psychology of male potency represented by supernatural rape myths, and also works to dangerously distance rape from its reality.⁹⁰

The Rape of the Sabine Women

Identified by Thomas Edgar as constituting the same crime of 'right ravishment' as the abduction of Helen, the story of the Sabine women presents a very different rape scenario from the one illustrated by that of Helen's flight to Troy. Unlike the rape of Lucrece or Helen, the rape of the Sabine women reported by Plutarch and Livy in their histories of Rome is contextually a political act rather than one of sexual transgression, treachery or lust.⁹¹ As Norman Bryson explains, the catalyst for the Roman leader Romulus's seizure of the Sabine women of marriageable age was the need to populate early Rome after attempts at intermarriage had failed. After a period of abstinence the women were married to Roman citizens in an official ceremony, which provided them with honourable status and ensured the legitimacy of their offspring. Bryson describes

⁸⁹ George Turbeville, *The heroycall epistles of ... Publius Ouidius Naso, in English verse* tr. G. Turbeville with A. Sabinus answers (London: 1567) STC (2nd ed.) / 18939.5, 99900422 < <http://eebo.chadwyck.com> > [accessed 20th December 2010] (p.105) British Library.

⁹⁰ Baines, "Effacing Rape," p.94, n. Baines provides the translation of the passage from *Ars Amatoria* and, following many other critics, points to the menace and longevity of Ovid's precept.

⁹¹ Bryson, "Two Narratives of Rape," p. 155. The following discussion is based on Bryson's reading of the Sabine legend, and his insights into the secular aspects of the stories of both the Sabine women and Lucretia.

how the English word ‘rape’ is inappropriate here in terms of Roman legal codes, which legitimate the Sabine women’s rape as a means of providing stability between the sexes and between states. Hersilia is reported as supporting this concept of stability in her appeal for peace after the Sabine men attempt to rescue the women some years after their abduction:

Which shall we call the worse, Roman love-making or Sabine compassion?
 If you were making war on any other occasion, for our sakes you ought
 To withhold your hands from those to whom we have made you fathers-in-laws
 and grandfathers. If it be for our own cause, then take us, and with us your sons-
 in-law and your grandchildren. Restore us to our parents and our kindred, but do
 not rob us of our children and our husbands. Make us not, we entreat you, twice
 captives.⁹²

Construed in the translations of the Roman historians as “love-making,” rape has a positive outcome through the success of Hersilia's entreaty and the ensuing peace between the Sabines and the Romans. This model of rape signifies it as an event naturalised by the bonds of marriage, in which the biological event of reproduction binds women to the family unit and serves to redefine the original crime. The concept of rape as a wrong is ameliorated because of rape’s efficacy in the solving of conflict between states, and in Roman terms both the effectiveness of rape and also its subsequent naturalisation ensures its justification. Occurring at the inception of the great Roman Empire, the rape of the Sabine women is further legitimated because it constitutes the founding event of Roman civilisation.

As Bryson demonstrates, Augustine and the Church fathers produced an antithetical interpretation of the same event based first in the need to discredit the pagan world, and secondly because the abduction was deemed sinful: “What in a pagan perspective is a story of law and of the emergent harmony between Rome and its conquered neighbours,

⁹² Bryson, “Two Narratives of Rape,” p.155.

when seen in the post-pagan perspective is one of crime, infamy and the emergence of a pagan empire unconsecrated by Christian law and Christian revelation.”⁹³ In terms of acts of rape, however, the Christian Church’s condemnation of the Roman event as sinful is contradictory, primarily because it is difficult to identify the difference between the Roman concept of the corporeal female body as foremost the property of the family and the state, and a similar patriarchal dictum inscribed in Old Testament law.

It seems that while the rape of the Sabine women drew condemnation from the Church Fathers as an example of pagan evil, an almost identical justification for rape is found in the book of Judges with regard to the capture and marriage of the Shiloh women to the Benjaminites (Judges 21: 1-25), which served a similar purpose in populating the state. The opacity of the term ‘rape’ in relation both to Roman legal codes and Old Testament examples relates to the way in which rape becomes a naturalised event in the construing of ‘consent’ as a woman’s reconciliation to her fate after her socialisation as mother and wife. This concept of consent bears some resemblance to that which legitimates arranged Christian marriages undertaken for material, social, and political advancement in that from the woman's perspective her ceremonial consent ensures legality, while her personal consent may be lacking. A striking example of this is demonstrated by the marriage of the young Francis Howard to the Earl of Essex and Francis’s subsequent protestations against the marriage and her struggles to extricate herself from the union.

In this respect, Thomas Edgar inadvertently demonstrates a certain double standard in relation to female sexual autonomy and the issue of female consent in that while he duly condemns the pagan rape both of the Sabine women, and also that of Lucretia, in line with Augustine's objections, he nonetheless simultaneously condones the laws on

⁹³ Bryson, “Two Narratives of Rape,” pp. 161-162.

rape that had evolved from the shared premise, found both in Christian, and also pagan Roman ideologies, that a woman's sexual consent was within the remit of patriarchal authority and was not hers to bestow or withhold.

The Ravishment of Lucrece

The kind of moral ambivalence that surrounds the figure of Helen in sixteenth-century literature also becomes attached to the figure of Lucrece in Shakespeare's *The Rape of Lucrece*.⁹⁴ The earlier reactions to the story of Lucretia's rape – an eclectic mix of the intellectual, the theological, and the imaginative – form the sources for Shakespeare's adaptation of the story in which a psychological drama is played out between Tarquin and Lucrece. The question Shakespeare raises in relation to Lucrece's unconscious response to her situation is one of degree. We are asked to consider to what extent the higher faculty of Lucrece's virtuous mind ruled the unconscious will of her body, and to judge as to the constraints between what historian Andrew Galloway describes as '*voluntas indirecta v voluntas directa*,' or Lucrece's "direct as apposed to 'indirect' " will.⁹⁵ Shakespeare poeticises the internal drama of the chaste Lucrece's self-estrangement in terms of the base attacking the sacred. Lucrece imagines her body in figurative terms as a fortress or temple, and she characterises the battle within it as the foul insurrection of the Kingdom's subjects against its ruler. She imagines the destruction within in terms of the unruly subjects battering down the consecrated wall that defends the unity of virtuous will and chaste body:

Her subjects with foul insurrection
Have battered down her consecrated wall,
And by their mortal fault brought in subjection
Her immortality, and made her thrall
To living death and pain perpetual,

⁹⁴ References are hereafter cited in the text *SL*.

⁹⁵ Galloway, "Chaucer's Legend of Lucrece," p. 820.

Which in her prescience she controlled still,
But her foresight could not forestall their will (*SL* 722-728).

Tarquin transgresses the male code of honour expected in a noble house, but we are asked to consider how far Lucretia's unconscious bodily will colluded in her seduction.

In his insightful study of rape and image, Norman Bryson discusses Titian's painting of Tarquin and Lucretia, which he argues depicts Lucretia's rape, yet at the same time denotes Lucretia's consent. In so doing, as Bryson explains, it is a superimposition of two separate iconographic subjects – “a man who rapes and a woman who seduces.” Recognizing this confusion of categories as consciously produced in Shakespeare's work, Bryson rightly suggests that this “conundrum” is due to the “debate like” aspect of Lucrece's case, which allows the Christian Augustinian interpretation of Lucrece's situation to be assessed in tandem with that of the secular interpretation of the Roman historians.⁹⁶ As we have seen, within the latter the female body first belongs to the public sphere, the *res publica*, and the family, and only in a secondary sense to the woman herself. The historical Roman concept of female identity is reproduced in the early modern legal interpretation of rape, which, as I have suggested, is primarily concerned with social, familial, and material aspects of female sexual relations and defines woman's legal and social position in relation to these. The doctrine of Christian morality, however, focuses the analysis of rape on whether female consent is given or withheld. As Bryson suggests, is it indeed, “the man who rapes or the woman who seduces”? The rapist commits a grave sin, but equally the victim is characterised by her connection to the fall and her libidinous nature, which dictates her non-consent to be deeply ambivalent. In Christian terms then, the principal characteristic of rape is that of its moral ambiguity, which contributes to the paradox in the confusion of categories that

⁹⁶ Bryson, “Two Narratives of Rape,” p.153.

Bryson describes in relation to Titian's painting. As in the different interpretations of Lucrece's culpability demonstrated by lawyers Edgar and Coke, so in art and literature the question of Lucrece's culpability as the violated wife is an unresolved issue, and her identity oscillates between that of innocent victim and seductress.

Central to Lucrece's story is the question of her suicide. In Shakespeare's *The Rape of Lucrece* the seeming paradox of Lucrece's self-destruction after she has protested her innocence is explained by the revelation that she perceives her body to be irredeemably defiled. In terms of Christian moral codes, it is not Lucrece's sexual transgression but her suicide that is of paramount importance. The concept of Lucrece's moral innocence is partly upheld by theological authority in the form of Augustine's teaching in *The City of God*. Augustine dictates that chastity of mind and will renders the victim of sexual assault guiltless of moral transgression. It is not sexual immorality, but Lucretia's self-slaughter that is a sin before God. The addendum to Augustine's ruling subverts, however, his pronouncement regarding Lucrece's sexual innocence, and also becomes the basis for a resilient pornographic illusion regarding rape that is to haunt the halls of justice for a considerable time to come. In acknowledging Lucrece's chastity of mind there is, nevertheless, still "the fear that the mind, too, may be thought to have consented to an act that could perhaps not have taken place without some carnal pleasure."⁹⁷ The nature of female consent is characterised as ambivalent because of woman's alleged vacillation and carnality, and rape leaves women open to accusations of complicity in an illicit seduction.

Although the concept of a separation between the chastity of mind and body was an early modern commonplace, in Shakespeare's poem Lucrece's chastity of mind is difficult to separate from her bodily state. This is symbolised by the issue of blood both

⁹⁷ Baines, "Effacing Rape," p.95, n., citing *The City of God Against the Pagans*, by St. Augustine, Bishop of Hippo, trans. by G.E. McCracken (Cambridge: Harvard University Press, 1957).

red and black as Lucrece dies: “and some of her blood still pure and red remained / and some looked black, and that false Tarquin stained (*SL 1742-43*).” It is presumed that Lucrece's experience leaves her hopelessly shamed and the ‘loss’ of chastity an unrecoverable loss, whether willed or not. Shakespeare demonstrates the initiation of Lucrece's self blame in Tarquin's accusation of her complicity. Despite Tarquin's recognition of Lucrece's innate chastity and his struggle with his conscience, his testament to the power of Lucrece's beauty displaces the blame on to her, and he maligns Lucrece and claims exoneration:

the colour in thy face.
that even for anger makes the lily pale,
And the red rose blush at her own disgrace,
Shall plead for me and tell my loving tale...
The fault is thine,
For those thine eyes betray thee unto mine (*SL 477 - 483*).

Reminiscent of Diomedes description of Helen's fairness as “a hell of pain and world of charge (*T&C IV. II.59*),” the dictum that these lines explore is one acknowledged by medieval moralists, who taught that penance should be fitted to how much effort went into the resistance of sin rather than the commitment of the sin itself. Beauty perceived as a form of male entrapment allows that the greater the beauty of the female the greater the struggle is to resist desire, and therefore the greater the exoneration should be if the male succumbs. By extension, the more beautiful the woman the more she incites male desire and the less blame can be incurred for sexual assault against her.⁹⁸ The logic behind Tarquin's accusation not only makes the victim complicit in her own rape, but also allows the rapist's struggles of conscience as a mediating factor in his defence.

⁹⁸ Peter G. Beidler, “Rape and Prostitution,” *Backgrounds to Chaucer*, in *ORB: the Online Reference Book for Medieval Studies* < <http://www.the-orb.net/textbooks/anthology/beidler/rape.html> > [accessed 10th December 2010] (para 5 of 16).

As Bryson correctly identifies, Shakespeare's poem plays on the ambiguities in this sexual scenario. The possibility that rape in this case could be illicit *stuprum* is acknowledged in Shakespeare's text through Lucrece's perception that she may have conceived a child: "This bastard graft shall never come to growth. He shall not boast / Who did thy stock pollute / That thou art doting father of his fruit (*SL 1062-1064*).” In early modern legal terms, Lucrece's fear that she has conceived a child negates her rape and verifies the consent of her body if not her will. The legal position on the subject of conception during rape is here summarised from the corpus of medieval and early modern authorities by Finch: "if the woman conceive upon any carnal abusing of her, that is no rape, for she cannot conceive unless she consent (*D.3.13.204*).” Based on Galen's theory that the female produced seed that was emitted only in the event of orgasm, Shakespeare's poem again introduces the concept of Lucrece's unwilling pleasure during the assault and thus in Christian terms the question of her culpability – a culpability that is crucial in judging whether her case represents rape or seduction.

The 'literary' rather than legal judgement of rape in *The Lawes* is a legal fiction in terms both of analogy and omission. It is significant that the legendary examples of rape used as illustrations both by the author of the *The Lawes* and Edward Coke are not among those in which the representations of rape are uncompromising with regard to the nature of the crime, and of which there are many classical examples. Instead, the representations of the rape of the aristocratic Lucrece are deemed to resemble real rape in enough respects to serve as analogies to the rape of early modern women. The difficulty with this is that of Augustine's judgement of Lucrece, which is the framing reference for Sir Edward Coke's influential analysis of rape. Coke draws on Livy's account of Collantine's question to Lucrece, "Is all well?" and her answer, "Far from it; for what can be well with a woman when she has lost her honour?" As we have seen, in

quoting the judgement from Augustine Coke's own position is implicit: "there were two and only one committed adultery."⁹⁹ Coke's references suggest Lucrece as doubly damned, with a legal classification as adulteress within the context of Roman law, and a moral definition as seductress within the doctrine of sin. Rape couched in these terms is predicated on the pre-existing doubts regarding female consent that are integral to both classical and Christian interpretations of the event.

While Edward Coke seems clear on the moral dubiety of Lucrece, Thomas Edgar contends that Lucrece's case represents the 'heinous' crime of rape. This claim is subverted, however, in relation to the ambiguity of his description of ravishment as an occasion "when a woman is enforced violently to sustaine the furie of brutish concupiscence (*L.V.XXX 317*). Although Edgar is aware of "The poyson of Ovid's false precept" (that force is pleasing to girls), he attests that a woman might forgive her aggressor "because he ventured his life for her sake (*L.V. XXV. 382*)," and thus redefines the crime of violence as one of violent desire or lust. This construction locates rape within the dimension of seduction and, in converting sexual brutality to an uncontrollable desire (to the point of death) for one particular woman, it valorises forced seduction as a form of passion. A further suggestion that "[t]his first kinde of rape deserves always death by God's laws, unless the woman ravished were unbetrothed, so that the ravisher might marry her" again, includes the possibility that rape is illicit and inappropriate seduction (*L.V. XXI.378*).

The omissions in Edgar's analysis that relate to class and position are also significant. Distinguished by its immediacy, Lucrece's rape is taken in *The Lawes* to signify all rape other than that accompanied by abduction or capture. Tarquin's violation of the wellborn beautiful Lucrece is a crucial event avenged with measures that have

⁹⁹ Baines, "Effacing Rape," p.96, n.

cataclysmic effect on the corrupt ruling elite. In formulating this concept of 'rape' as of epic importance but deeply unstable in its terms, it takes a considerable imaginative leap to align it to the suits of unprotected working women in the early modern courts. Poorer women reported the random brutality meted out to them by dint of their vulnerability either as inferiors, or because of their necessary isolation when working on the land. In drawing the analogy between real rape and that of Lucrece, the opportunistic, violent assault of an unknown woman by a stranger, or the repeated abuse of a servant by a social superior, are excluded within the terms of reference provided by the narrative. The innocuous commonplace of the legal fiction is in fact invidious in drawing the terms by which rape can be understood.

The narratives of Helen, Lucrece, and the Sabine women examined here, which in Thomas Edgar's analysis ostensibly show the difference between two kinds of rape, do in fact more often demonstrate the concept of dubious female morality that renders rape as seduction. Peele's *Tale of Troy* demonstrates Helen's consent as a reversal of Lucrece's, in that despite the possibility that Helen may resist temptation and her body remain chaste, her sin is inscribed in her unchaste thoughts. While Helen's consent is that of the will, Lucrece's consent is that of the carnal body in Shakespeare's *The Rape of Lucrece*. Indeed, all three narratives examined here indicate varieties of female consent that ostensibly negate rape, from Helen's lustful acquiescence to Paris and Lucretia's unwilling carnality, to the Sabine women's reconciliation to their married state. The early modern confusions both legal and linguistic in the concept of 'ravishment' and 'rape' are plain and resonate in the popular rape literature. Indeed, the author of the *The Lawes* closes his discussion "On Rape" with a reference to seduction. Although a woman's reputation is at stake in a "dishonest life or manners," it seems that "(n)either can a woman learn a more beautiful lesson than to be persuaded (*L.V. XL 389*)."

The contesting sexual ideologies in the literary representations of rape, which Bryson identifies also in the visual arts, bring Christian and pagan frameworks simultaneously into play, and the discourse of law likewise simultaneously co-opts Christian ideology into a system with secular practices and systems.¹⁰⁰ The pagan sexual ideologies presented by myth, which commemorate human sexuality and valorise male sexual potency and the Christian Church's concept of female sexual blame, whilst appearing to be in tension, do, in fact, cohere in terms of sexual crime to distance rape from its reality. In a legal culture in which the predominantly secular preoccupation of the law is with the negotiation of morally uncertain adversative human interests, the category of rape demonstrates a paradox as an act universally defined in moral terms but one that is frequently assessed in relation to either secular interests, or class hierarchy, and in which the female consent that negates rape is culturally ambiguous. Rather than definitive as the author of *The Lawes* suggests, the narratives of the legendary figures that both he and Edward Coke use as analogies of real rape are characterised by the interplay of competing perspectives, and contribute to the cultural fictions that order early-modern legal interpretations of sexual crime.

¹⁰⁰ Bryson, "Two Narratives of Rape," pp. 167-171.

Chapter 2

Performing the Law: literature and learning at the early modern

Inns of Court

Literary Fiction, Criminal Prosecution, and Dramatic Form in Criminal Trials

In Chapter 1 we saw how early modern legal concepts of criminal acts are highly inflected by poetic fictions. Literature and drama are intrinsic to early modern law, as we shall see. This phenomenon is generally recognized as a feature of legal discourse in ages past when the law was as yet unformed in its modern sense. A study of recent practice by lawyer Jennifer Temkin challenges this assumption however. Temkin's examination of both male and female barristers' working practices in defending and prosecuting rape points to a systematic tendency towards generalisation, a generalisation that involves the evocation of familiar narratives.¹ Drawing on the work of sociologist Paul Rock, Temkin's study focuses towards the ethical issues surrounding advocacy – a subject noted as attracting relatively little academic analysis – and she raises concerns with regard to barristers' use of sharply negative language to describe alleged rape victims, and also to the hypothetical classification of

¹ Jennifer Temkin, "Prosecuting and Defending Rape: Perspectives From the Bar," *Journal Of Law and Society*, Vol. 27.2 (2000), 219-248 in *JStore* < <http://www.jstor.org/stable/1410563219-248> > [accessed 21st December 2010]

plaintiffs into different and negative stereotypes.² As Temkin explains, “events are reconstructed into a limited range of stories,” in which victims may be cast in various roles as the “foolish young woman,” or the “tart,” or as an advocate of an “alternative lifestyle.”³ Such evidence suggests that dependence on fictional reconstructions of rape (many of which are archaic in origin) can be detected in modern practice as much as in that of the sixteenth and early seventeenth century.

It could be argued that the prosecution of rape crime is unique in its reliance on familiar narratives as a reflection of reality for the simple reason that sexual (non) compliance is often impossible to prove, and therefore must be judged subjectively against a situational ‘norm’ of human behaviour. Paul Rock provides robust support, however, for the claim that such illogical tactics are habitually used during all categories of criminal prosecution. In a comprehensive study of the workings of the Crown Court, Rock notes that “defence and prosecution counsel ... rely on standard stories, stories in which they may actually have little trust themselves.”⁴ A further observation makes plain the link not only between narrative fictions and concepts of criminal behaviour but also between dramatic form and the criminal trial, and Rock points to the omnipresent theatricality of proceedings in the English Crown Court:

there remained an ineluctable and pervasive sense that the world of trials was not quite firmly anchored, that barristers worked professionally to beguile their audience, that things could sometimes be other than they seemed and that on occasion social reality itself was in suspense.⁵

² Paul Rock, *The Social World of an English Crown Court* (Oxford: Clarendon Press, 1993), p.83, cited in Temkin, “Prosecuting and Defending Rape,” p. 241.

³ Temkin, “Prosecuting and Defending Rape,” p. 241.

⁴ Rock, *The Social World of an English Crown Court*, p.83, cited in Temkin, “Prosecuting and Defending Rape,” p. 241.

⁵ Rock, *The Social World of an English Crown Court*, p. 94.

It would seem that these remarks might more appropriately be applied to the ‘world of plays’ than to the weighty business of legal trial. Nevertheless, Rock’s study reveals a legal process in which a suspension of social reality relies heavily on dramatic form to achieve its effects, a process in which barristers act as “performers” who are cast as powerful representatives of the rational order in contrast to others, those whom Rock describes as the “ungainly and emotional creatures coming to be judged and give evidence.”⁶ It is evident from Rock’s study that the world of plays and the world of trials share important connections.

Rock’s findings suggest an implicit theatricality within the modern trial process that is perhaps well understood by legal professionals but which may not be immediately obvious to lay participants. Indeed, these findings are borne out in Temkin’s study, which discusses prosecuting barristers’ complaints about the unhelpful demeanour of some alleged victims of rape. It seems that some plaintiffs’ physical appearance, while unexceptional in terms of modern cultural norms, undermines their ‘performance’ as an innocent victim and works against them to support the defence.⁷ In this respect, some connections between the early modern legal context and our own are evident. Although it is argued that early modern criminal trials generally disallowed defence attorneys thus denying the opportunity for the kind of case presentation on behalf of the accused that we see today, such trials relied on the performances of both plaintiff and accused before a series of individuals and judicial groups. In the modern context, much like the early modern legal setting where a plaintiff’s favourable impression on the grand jury was the only means to

⁶ Rock, *The Social World of an English Crown Court*, p. 61.

⁷ One barrister bluntly attested: “I think its just common sense that if a woman looks like a scrubber she’s going to get less sympathy from a jury than someone who looks respectable.” Temkin, “Prosecuting and Defending Rape,” p. 230. This reinforces the concept of trial as performance, and also raises the question of the class prejudices of juries - against which or whose societal criteria are such judgements likely to be made?

ensure that a trial took place, and where the defendant's appearance, demeanour and 'show' before the petty jury determined his / her fate, external signifiers of guilt or innocence play an important part in proceedings which are conducted within the highly costumed, artificial world of the court.

Recognition of the issues surrounding the reliance on fictions and the kind of legal theatricality here described has been forthcoming in the modern world amidst government concern over the continually diminishing conviction rates for rape. Indeed, the Director of Public Prosecutions made a press statement acknowledging the "stereotypical myths and preconceptions of juries" that operate in rape trials in 2005.⁸ This statement appears to suggest that the formulaic strategies sometimes employed in trials for rape produce criteria designed for easy assimilation by the jury audience, a retelling in which human action closely reflects dramatic or literary convention, and that such strategies also work to uphold the conventional myths inherited from a patriarchal past. Partly as a response to this perception, a bizarre ancient ruling that denies prosecution counsel the right to interview alleged rape victims (or, indeed, prosecution witnesses) prior to trial has been the subject of an historic reconsideration.⁹ Originally instigated in suppression of the 'men of straw' – the dubious characters who hung around the English courts in the nineteenth century touting for business as prosecution witnesses – this ruling's reconsideration appears to be inexplicably overdue.¹⁰ A reflection on the philosophy that has traditionally

⁸ See Claire Dyer, "Criminal justice revolution to secure more convictions: Plan for prosecutors to interview witnesses before trial will end ancient rule," *The Guardian*, 11 November 2005, Home Pages, p.1.

⁹ United Kingdom Crown Prosecution Service, *Pre-trial witness interviews: Code of practice*, by Ken Macdonald QC, Director of Public Prosecutions (February 2008) <http://www.cps.gov.uk/victims_witnesses/resources/interviews.html#a01> [Accessed 13th December 2010].

¹⁰ These men identified themselves by sporting a straw in one of their shoes. See Polly Botsford, "Early Warnings," *Law Society Gazette*, 28th March 2008 <<http://www.lawgazette.co.uk/features/early-warnings>> [accessed 23rd December 2010]. An even earlier abuse in regard to the remuneration of witnesses is found in the fictionalised practice of wager of law during the sixteenth century. Proof

organised the concept of the English common law, however, may offer some explanation for what appears to be the conservatism towards legal reform.

Dramatisation and ritual have developed as fundamental elements in English legal practice – a practice that relies on a philosophy of law which privileges continuity. This continuity is powerfully demonstrated in the archaic forms of ritual and the language and costume of the criminal courts. Ideologically law is constructed as a distinct entity uncorrupted by political interference, changes in government, or the singular power of individuals or the vagaries of fashion, and as such its reform must be seen as unaccountable to any such criteria. Legal historian J.H. Baker suggests in relation to the historical context that whilst law schools are not disconnected from the realities of life, they have their own separate intellectual existence and can produce a logic that is sometimes more compelling than the shifting pressures from the outside world.¹¹ Most particularly, common law logic “has rarely admitted openly to the possibility of change,” and, as Baker explains, “(a)lterations in the common law therefore have to be accommodated on an intellectual level, and that is why existing doctrine inevitably controls the shape and speed of any reform.”¹² Baker’s analysis offers an explanation for conservatism towards legal reform, but questions remain for cultural scholars as to exactly why this should be so, and as to how the sources from which the legal ideologies and traditions that appear to be still so influential today emerged and evolved. Most importantly linked to these issues for the purposes of this thesis is the question of how the discourses of law and the arts established the links that are arguably still evident in the present day. Some answers to these questions

could be established in actions of debt through the oaths of eleven compurgators, or “knights of the Post,” who could be hired for a fee and were provided by the court porters. See Lorna Hutson, “Not the King’s Two Bodies: Reading the “Body Politic” in Shakespeare’s Henry IV, Parts 1 and 2,” in Kahn and Hutson, *Rhetoric and Law in Early Modern Europe*, pp.166-198 (p.184). See also J.H.Baker, *An Introduction to English Legal History*, 3rd edn (London: Butterworths, 1990), pp.87-88.

¹¹ Baker, *The Legal Profession and The Common Law*, p.465.

¹² Baker, *The Legal Profession and the Common Law*, p. 465.

may be provided through a consideration of the law's cultural history and an examination of the humanist ideologies responsible for the relations among legal discourse, dramatic presentation, and literary culture. A productive basis for such an investigation lies in an examination of the unique literary / legal culture and intellectual milieu of the Inns of Court during a period which witnessed, in the words of Bradin Cormack, "the long process of centralization and rationalization through which the common law achieved interpretive hegemony" – a period also in which a burgeoning secular legal community produced a matrix for the tradition of 'literature in law.'¹³

The Historical Context: Concepts of The Common Law

Citing lawyers as "a peculiarly Western phenomenon," legal historian Wilfred Prest asserts that "specialist secular legal advisors," were unknown outside Western Europe and its various colonies until relatively recently.¹⁴ Deferring to the ideas of Max Weber, Prest points to the decisive responsibility of lawyers "for those two institutions – capitalism and the 'legal rational modern state' – which have most strikingly differentiated Western Europe from the rest of the world between the Renaissance and the present day."¹⁵ The supremacy of the practitioners of law in helping to shape the early modern constitution can be best understood in relation to a popular concept regarding the common law itself, a concept of which early modern lawyers were the guardians and interpreters and one which lived on in the collective imagination for many centuries. Frequently expounded upon by lawyers, the common

¹³ Cormack, prologue to *A Power to do Justice*, p. 1.

¹⁴ W.R Prest, introduction to *Lawyers in Early Modern Europe and America* (London: Croom Helm, 1981), p.11.

¹⁵ Prest, *Lawyers in Early Modern Europe and America*, p.11.

law was envisioned as natural law, and its practice was acknowledged as the fulfilment of the immutable natural order necessary for a civilised world.

Most notably during the sixteenth and early seventeenth centuries, and following the constitutional changes brought about by the Henrician reforms, the legal profession exerted enormous political power over a developing form of governance in which the common law was considered to represent the ethical principals embodied in both Judeo-Christian teaching and Neoplatonic humanism.¹⁶ Frequently imagined as part of ancient native custom with origins at the beginning of human time, the common law was often characterised as embodying natural law, human reason, and a sacrosanct model of divine purpose that could protect the basic rights of all English subjects. As such, its worth was by dint of its antiquity and its place in formulating the very identity of the English nation. As custodians of this ancient system, the legal community could theoretically claim authority over interpretations of constitutional legality and monarchic rights through their authority as a self-regulating ethical body that was representative of a natural order. The power of common lawyers thus lay in the authority of their ethical status as moral guardians of an unwritten, fundamental, and ancient constitution, a concept that could be used to temper excessive demands exerted through the power of the royal prerogative.¹⁷ On a practical level, the early modern common law languages of record were medieval Latin and a variety of Anglo-Norman French that were obscure to the lay man. Law-French was a debased species of the language with which only those trained at the Inns of Court and Chancery were fully conversant, and the effect of its general use together with that of archaic legal Latin was to render the comprehension of common law largely exclusive

¹⁶ Introduction, pp.4, 26-27. See also Raffield, introduction to *Images and Cultures of Law in Early Modern England*, p. 2.

¹⁷ Raffield, introduction to *Images and Cultures of Law*, pp. 3-5.

to the lawyers themselves.¹⁸ The very use of the language of law thus reinforced the exclusivity and mystique afforded to lawyers through their role as guardians of the ancient constitution.

While the antiquity of a distinct native common law was an established principle amongst the early modern legal profession and one influentially propounded by Sir Edward Coke, the founders of native law, together with the supposed ancestral founders of the European ruling dynasties, were frequently named in the early part of the period as the mythical heroes of the classical world.¹⁹ Popular literature acknowledged the mythic world as linked to the identities of the ruling elite, for example as in Ronsard's unfinished epic poem, *Franciade* (1572), written in celebration of Charles IX's dynastic heritage, and the English chronicles of Richard Grafton in the 1560s which linked the English dynasties with the story of Troy. Assimilation both of authoritative classical myth and ancient philosophical principals into the early modern theology can be partly attributed to the syncretism of medieval culture, which reproduced both a euhemeristic view of myth that cited the ancient deities as ancestors of the European nations, and also an understanding of classical myth as an allegory of the cosmographical world which could reveal philosophical or moral truth.²⁰ Elaborated upon in medieval and Renaissance art and literature, the concept of theological integration reproduced by early modern humanists allowed myth and legend to be interpreted in relation to the diverse philosophical discourses of the ancient world and thus assimilated into Christian ideology.²¹ As a consequence,

¹⁸ E.F.T. Tucker, "Ruggle's Ignoramus and Humanistic Criticism of the Language of the Common Law," *Renaissance Quarterly*, 30.3. (1977) 341-350 in *Jstore* < <http://www.jstor.org/stable/2860050> > [accessed 23rd December, 2010] (p. 342).

¹⁹ Fortescue, *De Laudibus Legum Angliae*, sig. F33r.

²⁰ Jean Seznec, *The Survival of the Pagan Gods: the Mythological Tradition and Its Place in Renaissance Humanism and Art*, trans. by Barbara F. Sessions, Harper Torchbooks / The Bollingen Library, 2004 (New York: Harper & Row, 1961, c1953).

²¹ See Chapter 1, p.59.

references to the classical origins of law and to the common root of all law as the “pure and tryed reason” originally revealed to the world by the great legislators – Moses, Solon and Lycurgus – produced an authoritative basis for claims about the ancient and unassailable nature of the law itself.²²

Concepts derived from classical antiquity were vital then to early modern legal discourse. This is most strikingly demonstrated at a cultural level through the masques and dramatisations produced by members of the Inns of Court in which, as we shall see, classical themes predominated, and also through the political model of *justitia*, or Plato’s original concept of “right relations” between ruler and the ruled which, as Paul Raffield suggests, was an organising principle behind the legal institution’s power within the emerging constitution.²³

While it is evident that a claim can be made for the pre-eminence of lawyers in the casting of early modern political ideologies, a similar claim can be made for the significance of the law and the importance of legal training to literary cultural development. Sir Philip Sidney (1554 – 1586), Sir Thomas More (1478 – 1535), John Donne (1572 – 1631), Sir Francis Bacon (1561 – 1626), Barnabe Googe (1540-1594), George Turberville (1540? - 1610?), George Gascoigne (1534-1577), John Davies (1569- 1626), Francis Beaumont (1584 – 1616), Thomas Middleton (1580 – 1627) and John Webster (1580 – 1625) are only a few among the many distinguished alumni of the Inns of Court who helped fashion what we customarily acknowledge as the early modern literary canon. This flowering of dramatic and literary endeavour within the elite and cohesive early modern legal community is attributable to a variety of social, intellectual and political circumstances. In common with several scholars who have investigated these circumstances in some detail, Wilfred Prest maintains

²² Dugdale, *Origines Juridicales*, p.3. Dugdale quotes Plowden.

²³ Raffield, introduction to *Images and Cultures of Law*, p.4.

that, while the inns provided what he identifies as a relatively ill-defined legal training, they fostered an exceptional artistic and intellectually stimulating environment. Further, it was this environment that “mould(ed) the distinctive cultural profile of England for centuries to come.”²⁴ It is clear that the success of the sixteenth-century inns is representative of the extraordinary authority of the legal institution in determining much of our early political and cultural development. Indeed, the legal institution is acknowledged as constituting almost a separate class in early modern society: one that had to be reckoned with by the Government just like the gentry and the aristocracy.²⁵ In order to address the questions as to how the inns developed as institutions of power and prestige, and as to what contributed to the environment that led to the rush of artistic creativity during the sixteenth and early seventeenth centuries, it is necessary first to briefly consider the development of the inns as legal institutions, and examine the social and intellectual context in which they functioned.

The Development of the Legal Establishment: The Early Modern Inns of Court

In Context

The sixteenth-century Inns of Court principally comprised the four great inns of Lincoln’s Inn, the Middle and Inner Temple, and Gray’s Inn, which bear the names of the various medieval occupants who inhabited the original buildings. The following history is based on Edward Waterhous’s seventeenth-century account of the inns, which indicates that Lincoln’s Inn was formerly the property of Henry Lacy, Earl of

²⁴ W.R. Prest, *The Inns of Court under Elizabeth 1 and the Early Stuarts*, p.168.

²⁵ Philip J. Finklepearl, *John Marston of the Middle Temple: An Elizabethan Dramatist in His Social Setting* (Cambridge, Massachusetts: Harvard University Press, 1969), pp. 79-80, quoting Wallace Notestein, *The Winning of the Initiative by the House of Commons* (London: 1924), pp.49-50.

Lincoln, which, after passing to the Bishop of Chichester, came into the possession of Justice Sullyard during the reign of Henry the VII, and was then sold by Sir Edward Sullyard to the benchers and students of Lincoln's Inn during Elizabeth's reign.²⁶

Acknowledged as the most ancient pair of the four great inns, the two Temples were originally the *hospitia*, or lodgings of the Knights Templar who had occupied the buildings for some one hundred years until the absolution of the order in 1312 when lawyers took up residence. The building of Gray's Inn, which was situated within the manor of Purpoole and was thought to have original links with St Paul's Church, had initially been the manor house of the Barons Gray de Wilton and was occupied by students of law from the time of Edward III.

Attached to the four principal inns were several lesser Inns of Chancery.

Waterhous describes these *minora*, or lesser inns as institutions where the clerks, or "gudgeons" and "smelts" of the law studied the formation of writs and prepared for entry to one of the *majora*, or four principal inns where the "gyants" and "behemoths" of the law had residence.²⁷ This was true of the Inns of Chancery until the beginning of the seventeenth century when they became institutes in their own right and catered for the lower branches of the profession.²⁸ Of the lesser inns, Thavies or Davies Inn was identified as the most ancient and was said to take its name, like the major inns, from the original occupant. Together with Furnivall's Inn, which had been the dwelling of Sir William Furnivall and was owned by the Earl of Shrewsbury in the reign of Henry IV, Davies Inn was presided over by the benchers of Lincoln's Inn, who sent readers every year from the principal establishment to read law to the young students. A similar arrangement operated at the other lesser inns. Gray's Inn presided both over Barnards's Inn, and Staple Inn, which took its name from the merchants of

²⁶ Edward Waterhous, *Fortescutus Illustratus*, pp. 526, 527.

²⁷ Waterhous, *Fortescutus Illustratus*, p.526.

²⁸ Prest, *The Inns of Court*, p.129.

The Staple who had originally occupied the property, and the Middle Temple held jurisdiction over the New and Strand Inns. The Inner Temple presided over three of the lesser inns: Clifford's Inn, originally the property of Lord Clifford; Clements Inn, so called because it pertained to the parish of St Clement Danes; and Lyons Inn, which before Henry VII's time held the sign of the Black Lion.

In terms of the inns' development as legal institutions, the earliest medieval records of the four greater inns show that they did, indeed, simply begin as *hospitia*, or inns, used by a loose fraternity of lawyers when visiting and practicing in London in the fourteenth century. The initial foundation of a central secular legal community was brought about by the administrative reforms of Edward I, who in 1292 ordered that advocates acting in secular actions should not be members of the clergy.

Edward's Lord Chief Justice, John de Mettingham, recruited able non-clerical lawyers and attorneys from across England to serve the needs of the Westminster courts thus facilitating the gathering of an unprecedented number of secular lawyers who settled in the capital in convenient locations close to the Royal Court.²⁹

Traditionally the *hospitia* for men of law during the fourteenth and fifteenth centuries, the inns became increasingly successful as legal institutions following the Act of Supremacy and the subsequent unfolding of the radical transformation of Church and State in the sixteenth century. The eventual break with Rome brought about important changes in the law that, although in part were the result of the evolution in common law reasoning during the previous century, were predicated upon the political upheaval of the Reformation. Although transformations in legislation and the development of the legal profession were complex processes and not solely due to Tudor politics, as legal historian J.H. Baker makes clear, the

²⁹ Raffield, *Images and Cultures of Law*, p.12.

prohibition on the teaching of canon law, and the constitutional recognition of the status of barristers in 1532, promoted a secular legal system in which the common law held jurisdiction in areas that had been previously ordered by ecclesiastical authority.³⁰ The restriction of university trained civil lawyers to the work in the Admiralty Court, the Court of Requests, ecclesiastical courts and the Chancery also supported the popularity of the inns as a ‘third university,’ which offered its members advancement across a broad legal and commercial spectrum.³¹ State reform, and, as the century wore on, a boom in commercial prosperity thus advanced the inns as affluent establishments that could offer students training in the law and, equally importantly, provide links with an elite fraternity operating within the powerful political and intellectual milieu of the capital.

The early modern inns were characterised by the cohesive nature of their communities. This may be attributed in part to the strong familial and geographical ties that existed among many of the original members. The families of Littleton, Croake, and Finch, for example, maintained an extraordinary presence at the inns: up to seven men of the Littleton family attended at the inns before 1600, and while twenty five members of the Croake family were admitted to the Inner Temple between 1515 and 1655, a total of twenty six sons from the Finch family were members between 1556 and 1776.³² Although it is clear that numerous family and local networks operated within the individual establishments, evidence of early modern admissions also shows that there was a fairly disparate membership and that the inns numbered among their members men who had no previous connections either within the institution or with the law itself.

³⁰ Baker, *The Legal Profession and the Common Law*, pp 462-463.

³¹ Prest, *The Inns of Court*, p.22.

³² *Catalogue of Manuscripts in the Library of The Honourable Society of The Inner Temple*, ed. by J. Conway Davies, 3 vols (London: Oxford University Press, 1972) I. pp.149-153.

Wilfred Prest's study of admissions registers shows that the early modern inns were very unlike typical universities or academic colleges, but instead resembled clubs or associations and comprised large and fairly transient legal fraternities. The residential population varied, and although occupants of chambers with status below the bench were required to attend weekly commons for eight weeks of the year or risk the forfeit their lease, this was not always enforced. Leased chambers were sometimes transferred or sold privately (against institution rules) and appear to have been difficult to obtain and much sought after, so that students sometimes either occupied the rooms of one of their absent fellows or found lodgings elsewhere.³³

Membership of the inns was sometimes sought for accommodation purposes, or for the links it provided with an influential milieu, as much as for the opportunity to forge a legal career. The disparate membership at each inn thus included not only serious law scholars ambitious for the highest honours, but also country gentlemen destined to take up careers as local justices; those who would eventually find employment as land agents, accountants, or brokers in one of a range of ancillary professions associated with the law; and the future ambassadors, members of Parliament and royal councillors who would made up the ruling elite. In addition to these members can be added a transient population of visiting lawyers, gentlemen, and honorary members, and those who used the inns solely as institutions in which to complete their artistic and social education. By 1600 the annual figure for admissions had increased to fourfold that of the early 1500's. In spite of this rapid expansion, it appears that the inns retained a certain club-like quality that served the needs of a diverse legal

³³ Prest, *The Inns of Court*, p.12.

population comprised both of those bound by the fraternity of wealth and status and those who aspired to it.³⁴

The earliest comprehensive description of the inns is found in Sir John Fortescue's *De Laudibus Legum Angliae* c 1470, on which Sir Edward Waterhouse based his account of the inns in 1663, and which served to promulgate a somewhat idealised picture of the inns that remained constant for many centuries. Written as a celebration of English law for the edification of Edward, the exiled son of Margaret of Anjou, Fortescue's treatise conceives the study of law as a princely pursuit, and the inns as "an University or schoole of al commendable qualities requisite for Noble men."³⁵ In fact, it appears that the yearly living costs of twenty marks or more together with the cost of a servant were quite simply prohibitive for the lower orders: "the poore and common sorte of the people, are not able to beare so great charges, for the exhibytion of theyr Chyldren. And Marchaunt menne can seldome finde in theyr hearts to hynder theyr marchaundyse wyth so greate yearely expenses."³⁶ While Fortescue describes the fifteenth-century inns as the preserve of the nobility, changes in the inns' social composition and function took place during their gradual expansion from the beginning of the 1530's, and as a result of the more rapid growth from 1560 to 1640 during what Lawrence Stone has identified as a period of exceptional educational development and upward social mobility.³⁷

The increasing mutability of social status during this period was deftly satirised in 1558 by a young wit, Thomas Bastard:

³⁴ J. H. Baker, "The Third University, 1450-1550: Law School or Finishing School?" The Intellectual and Cultural World of the Early Modern Inns of Court. Conf. Courtauld Institute, London. 14-16 Sept. 2006. See also Prest, *The Inns of Court*, pp. 7, 22, 23.

³⁵ See Prest, *The Inns of Court*, p.1-3. Fortescue, *De Laudibus Legum Angliae*, p. 115.

³⁶ Fortescue, *De Laudibus Legum Angliae*, p. 114.

³⁷ Lawrence Stone, "Social Mobility in England 1500-1700," *Past & Present*, 33.1 (1996) 16-35 in *JStore* < <http://www.jstor.org/stable/649801> > [accessed 23rd December 2010] Statistical analysis of admissions can be found in Prest, *The Inns of Court*, pp. 5-16.

Epigr. 18.

A Wonderful scarsety will shortly ensue,
 O Butchers, of Bakers, of all such as brewe,
 Of Tanners, of Taylers, of Smithies and the rest.
 Of all occupations that can expres'de,
 In the yeare of our Lorde, six hundred and ten.
 I thinke: for all these will be Gentlemen.³⁸

Bastard was one of a literary circle that surrounded Richard Martin of the Middle Temple and included lawyer/poets John Davies, John Hoskins, and Henry Wotton. In common with others within this group, Bastard courted controversy and had lost his fellowship at Oxford after writing a scandalous libel revealing the sexual proclivities of the senior academic community.³⁹ Here, Bastard's comments on the changing mores within society appear to be an accurate reflection of circumstances at the inns at the time of the epigram's publication. From the 1550's onwards young men of the yeoman and merchant classes were admitted as members and, in spite of some evidence of contemporary disapproval, including a royal edict in 1604 that only "gentlemen by descent" should be allowed entry, there is little evidence that access to the inns was refused on grounds of social class.⁴⁰ Indeed, the father of one of the most well remembered lawyer / poets of the period, Thomas Norton, was a London grocer whose assiduous acquisition of estates in the 1530s and 40s had subsequently enabled him to lay claim to the status of gentleman.⁴¹

The opportunities that admission to one of the inns offered the sons of the non-gentry should not be underestimated. Another example of the success enjoyed by one such member is aptly demonstrated by the career of Richard Prince (Prynce), a

³⁸ Thomas Bastard, *Chrestoleros Seu en bookes of epigrammes written by T B.* (London: 1598) STC (2nd ed.) / 1559, 99840251 <<http://eebo.chadwyck.com>> [accessed 23rd December 2010] (p.116) Henry E. Huntington Library and Art Gallery

³⁹ Finkelpearl, *John Marston of the Middle Temple*, pp.48-49.

⁴⁰ Waterhous, *Fortescutus Illustratus*, p. 528. See also Prest, *The Inns of Court*, p.26.

⁴¹ Michael A.R. Graves, *Thomas Norton: The Parliament Man* (Oxford: Blackwell, 1994), p.14.

shoemaker's son from Shrewsbury who was admitted to the Inner Temple in 1554.⁴² Lacking a university education, Prince appears to have been self-educated. Although never called to the bar, Prince created a hugely successful legal practice and amassed enough wealth to erect a lavish home in his native Shrewsbury and establish his family among the ranks of the gentry. One of Prince's sons subsequently became the sheriff of Shropshire, and in common with another of his siblings was eventually knighted. Although by the end of the century the tightening up of regulations made a call to the bar an essential requirement for counsellors at the bar both in Westminster and in the provinces, it is clear that admittance to one of the inns as an apprentice at law during the 1550s could offer a possible route to extraordinary success and social advancement.⁴³

In spite of evidence of the club-like atmosphere that bound the inns' communities, and the proof of the opportunity for advancement that membership provided, it is not the intention here to suggest that an overt spirit of egalitarianism characterised the ethos of the inns. Indeed, a palpable social and intellectual elitism is discernible in much of the writing of the period and it is clear that those of a perceived lesser social standing frequently suffered the jibes of their better-connected peers, as this epigram from Everard Guilpin's *Skialetheia* demonstrates:

Of Titus. 3.

Titus oft vaunts his gentry euery where,
 Blazoning his coate, deriuings's pedigree;
 What needest thou daily *Titus* iade mine eare?
 I will beleeeue thy houses auncestry:
 If that be auncient which we doe forget,

⁴² Richard Prince's history is recorded by Baker, *The Legal Profession and the Common Law*, pp.129-134.

⁴³ See Baker, *The Legal Profession and the Common Law*, pp. 134-135 for a discussion of the tightening of regulations after 1590.

Thy gentry is so; none can remember it.⁴⁴

The inns' *literati* frequently lampooned those perceived as upstarts, or of indifferent education, and here Guilpin satirises the hapless Titus as publicising his lack of pedigree through his ostentatious attempts to demonstrate his social standing. While the tone of Guilpin's verse is playful, that of John Davies is rather more contemptuous in another contemporary epigram that appears in a collection bound with a translation of Ovid's *Amores* by Christopher Marlowe. Davies parodies the tastes and manners of 'Publius,' a student of the common law, who fits a stereotypical image commonly reproduced during this period and one that mocks the upward social mobility identified by Stone:

In Publium. 43.

Publius student at the common law,
Oft leaues his bookes, and for his recreation:
To Paris-garden doth himselfe withdrawe,
Where he is ravisht with such delectation,
As downe amongst the Beares and Dogges he goes,
Where whilst he skiping cries to head, to head,
His satten doublet and his veluet hose,
Are all with spittle from aboue be-spread.
When he is like his fathers country shall,
Stinking with dogges, and muted all with haukes,
And rightly too, on him this filth doth fall,
Which for such filthy sports his bookes forsakes,
Leauing old Ployden, Dier and Brooke alone,
To see old Harry Hunkes and Sacarson.⁴⁵

Davies sketches Publius as a clichéd figure of little intellectual ability whose recreational pursuits, like those at his father's country hall, demonstrate his lack of

⁴⁴ Edward (Everard) Guilpin, *Skialetheia. Or, A shadowe of truth, in certaine Epigrams and Satyres*, (London: 1598), STC (2nd ed.) / 12504. 99840251 < <http://eebo.chadwyck.com> > [accessed 23rd December 2010] (sig. A4.v) Henry E. Huntingdon Library and Art Gallery. All references are to this edition. (*iade* - invade)

⁴⁵ Ovid, *All Ouids elegies 3. bookes. By C.M. Epigrams by I. D.* (London: 1603) STC (2nd ed.) / 18931a, 99848940 < <http://eebo.chadwyck.com> > [accessed 23rd December 2010] (sig. G5v) Henry E. Huntingdon Library and Art Gallery.

urbanity and social prestige. A preference for bear baiting rather than the study of the law texts of Plowden, Dyer, and Brooke together with his inappropriate apparel, which flouts the clothing prohibitions of the Middle Temple Parliament, indelibly mark Publius as the product of his father's 'house,' hall/lineage.⁴⁶ Sons of the rising mercantile classes were likewise subjected to ridicule and in 1598, the same year in which Guilpin's *Skialetheia* appeared, Thomas Bastard's *Chrestoleros* included this short epigram satirising the ambitions of *Gaeta*, an 'over reacher' of lowly birth:

Epigr. 4. In Getam.

Gaeta from wooll and weaving first beganne,
Swelling and swelling to a gentleman,
When he was gentleman, and brauely dight
He left not swelling till he was a knight.
At last, (forgetting what he was at furst)
He swole to be a Lord: and then he burst.⁴⁷

The reported avarices of the mercantile classes were at odds with the qualities of honour and integrity that supposedly marked those of 'gentle birth,' and the veracity of the individuals whose newly acquired fortunes enabled rapid social advancement was frequently portrayed as suspect. That there was some basis for such an assumption is demonstrated by the case brought against the father of the young Thomas Norton in 1540. As we have seen, Thomas Norton's father was a London grocer. Fined for fraudulently obtaining lands by false declaration, Thomas Norton senior was evidently not adverse to "sharp practice" in his efforts to increase his wealth, and the success of his endeavours ensured both his own social advancement and later provided for his son's legal education at the Inns of Court.⁴⁸ While Bastard's verse, above, merely parodies mercantile ambitions and appears to

⁴⁶ Finklepearl, *John Marston of the Middle Temple*, p.12.

⁴⁷ Bastard, "Epigram 4," *Chrestoleros*, p.107.

⁴⁸ Graves, *Thomas Norton the Parliament Man*, p.14.

demonstrate a fairly innocuous social elitism, one of Guilpin's epigrams from the same period explores the questionable coupling of mercantile self interest with the practice of law and, in so doing, touches on the fundamental issue of the honourable status of the law and the morality of those who practice it:

Of Noeuia 40.

Noeuia is one vvhile of the Innes of Court,
 Toyling in Brooke, Fitzherbert, and in Dyer:
 Another vvhile th'Exchang he doth resort,
 Moyling as fast, a seller, and a buyer :
 Will not he thriue (think yee) who can deuise,
 Thus to vnite the lavv and merchandise?
 Doubtlesse he vvill, or cosen out of doubt;
 What matter's that? his law will beare him out.⁴⁹

Guilpin's epigram indicates *Noeuia*'s debasement of the noble art of law, and raises the question of the ethical principals involved in legal practice, a practice in which the lawyer's financial self-interest is a dominant preoccupation. Should the reader be left in any doubt as to the unreliability of the status of 'gentleman' as a marker of integrity, Guilpin wrote a crude sequel to his first libel: "*Noeuia*'s a Merchant, and a Gentleman: That is, scarce honest, liue how he can."⁵⁰ A shrewd manipulation of the law for personal profit seems a long way from the noble and unbiased practice of the law that Fortescue envisaged, and Guilpin's verses subvert the rhetoric of the quasi-religious nature of the common law and its practitioners that was propounded by the legal institutions. In a further epigram in the series Guilpin declines to reveal his character's identity but assures the reader that *Noeuia* is a "Lawyer, and Merchant to," who as a "busie fellow" will doubtless very soon rise to prominence. The indication that the crafty *Noeuia* is likely to be "A knaue Promoter for his honesty" and thus a

⁴⁹ Guilpin, "Epigram 40," *Skialetheia*, sig. B2r.

⁵⁰ Guilpin, "Epigram 41," *Skialetheia*, sig. B2r.

dangerous opponent makes clear that Guilpin would be ill advised to reveal to whom his libel refers.⁵¹

Duly noted by various commentators during the period, the incursion of students to the inns during the latter part of Elizabeth's reign included those whose behaviour and demeanour sat uncomfortably with the self-proclaimed ethos of the legal establishment, and the epigrams and verse satires of Bastard, Davies, and Guilpin provide fascinating observations on the inns' membership at a time of unprecedented social flux. Usually circulated in manuscript form for consumption by a select audience, verse satires or 'libels' can be identified as shaping part of a literary trend towards oblique and often contentious social and political commentary, in which the various masques and vacation entertainments at the inns also featured.

Satiric commentary on the legal profession was, of course, not new and has firm precedents in both medieval and classical literature. Linked to one of the three forms of oratory in classical rhetoric – that of demonstrative oratory, or the articulation of praise and blame – the production of verse satire at the inns conforms to a scholarly epideictic tradition in which the mastery of the arts of dispraise and panegyric, or *vituperatio* and *laudatio*, are fundamental to the proper development of oratorical and compositional skills.⁵² The attacks on the origins, life, and manners of their peers found in the works of Gilpin and Bastard thus conform to a recognized mode of rhetorical exercise, which was recommended by Quintilian as of great practical use in the law courts.⁵³ As David Colclough has shown, this tradition has also a keen ethical agenda in that the poet's moral imperative is that of censoring vice as much as

⁵¹ Guilpin, "Epigram 42," *Skialetheia*, sig. B2r - B3v.

⁵² Peter Mack, *Elizabethan Rhetoric: Theory and Practice* (United Kingdom: Cambridge University Press, 2002), p.9; David Colclough, "Verse Libels and the Epideictic Tradition in Early Stuart England," *Huntington Library Quarterly*, 69.1 (2006), 15-30 in *JStore* <<http://www.jstor.org/stable/3818016>> [accessed 23rd December 2010] (p.27).

⁵³ Colclough, "Verse Libels and the Epideictic Tradition," p. 23.

praising virtue, and, as Colclough notes, recent scholarship has established that verse libels are not only intrinsic to early seventeenth-century debates on civility and honour, but are also representative of the way in which early modern political culture was formed in “unofficial forums” that resisted censorship.⁵⁴

The production and circulation of satiric manuscript verses at the early modern inns thus formed part of a particularly important communal exercise, an exercise that appeared to subvert the concept of lawyers’ moral superiority whilst paradoxically working, in some cases, to uphold it. Jessica Winston has shown how the exchange of didactic manuscript literature at the inns represented a process of self-definition, or self-fashioning, in which individuals established scholarly, spiritual, and social identity.⁵⁵ Like the exchanges of moralistic lyric poetry among George Turberville, Barnabe Googe, and George Gascoigne in the 1560s and 70s, which Winston identifies as working to establish and promote a collective ethic, the dissemination of satiric verses among the wits during the 1590s worked to emphasise the capabilities and ethical principles of a factional, self-professed elite through disassociation with those individuals deemed wanting in honour, education, or ability. Rather than defining who they were through statements of conventional piety like Googe, Gascoigne, and Turberville, the satirists defined themselves through identifying who they were not, and achieved this with stringent criticisms of the apparel, morals, intellect, social standing and financial ambitions of those who did not meet the moral ideals for which they allegedly stood.

Concerns regarding the lack of integrity and learning demonstrated by some legal practitioners, and even damning criticism of the quality of the inns’ membership,

⁵⁴ Colclough, “Verse Libels and the Epideictic Tradition,” p.19.

⁵⁵ Jessica Winston, “Forming a Professional Community: Lyric Poetry at the Early Elizabethan Inns of Court”, *The Intellectual and Cultural World of the Early Modern Inns of Court*. Conf. Courtauld Institute, London. 14-16th Sept. 2006.

appears to have had little effect on the process of admittance, however. Membership escalated, and the scale of the building works that took place within the great halls of Gray's Inn, Staple Inn, Middle Temple, and Lincoln's Inn during Elizabeth's reign and the early Stuart period reflected the financial success enjoyed by the legal institutions as a result of the unprecedented rise in membership. Fashioned in a late gothic style and built at great expense, the inns' halls rivalled any of the most imposing of the Tudor halls including those at Cambridge University and Hampton Court Palace. Such opulence signified both the importance of law as an essential component of early modern education, and the increasing status of the legal institutions as the training ground for a powerful elite.⁵⁶

In spite of the lavish surroundings, the environment of the early modern inns was distinguished not by insularity but by a relative accessibility, as we have seen. The inns' central location also ensured a lively environment, and the wider community of the inns incorporated a cross section of the capital's inhabitants including cooks, servants, and the laundresses who dried the linen on Lincoln's Inn Fields; vagrants, who inhabited the gardens until an edict ordered their removal in 1580; and the clients, friends, neighbours, and children who regularly roamed the inns' environs.⁵⁷ William Dugdale later went as far as to suggest, "that the Students may as quietly study in the open streets, as in their Studies" in his criticism of the strident atmosphere that prevailed at the inns during term.⁵⁸ These concerns appear well founded when considered in relation to judges' orders of 1614 which complained of the "bankrupts and debtors, which make here their subterfuges from arrests" and the sundry

⁵⁶ Mark Girouard, "The Architecture of the Halls of the Inns of Court," *The Early Modern Inns of Court*, Conf. Courtauld Institute, London. 14-16th Sept. 2006.

⁵⁷ Paula Henderson, "The Evolution of the Gardens of the Inns of Court," *The Early Modern Inns of Court*, conf. Courtauld Institute, London. 2006. Claire Rider and Celia Charlton, "The Inns of Court in Context," *The Early Modern Inns of Court*, conf. Courtauld Institute, London. 2006.

⁵⁸ Dugdale, *Origines Juridicales*, p.195. See also Finklepearl's discussion of the Inns' environment in Finklepearl, *John Marston of the Middle Temple*, p.10.

“gentlemen of the country ...forriners and discontinuers,” whose presence threatened to turn the houses from ‘*hospitia* to *diversoria*’”⁵⁹ As both the site of legal practitioners’ working offices and the focal location for an itinerant membership, the inn’s locale provided the possibility of personal anonymity to those who frequented it, and the observations above suggest that the inns’ environment masked the protean identities of some of its visitors.

Eminent lawyers and great statesmen emerged from the inns’ heterogeneous milieu during this period in spite of the less than conducive atmosphere described above, but it is unsurprising that the capital’s distractions also deterred many students from the study of law. The dissolute lifestyle that characterised some young men’s stay at the inns, and, indeed, their eventual ruin was regularly satirised in the literature of the period. Guilpin’s epigram ‘*Of Gnatho*’ is a typical example:

Of Gnatho. 25.

My lord most court-like lyes in bed till noone,
 Then, all high stomackt riseth to his dinner,
 Falls straight to Dice, before his meate be downe,
 Or to disgest, walks to some femall sinner.
 Perhaps fore-tyrde he gets him to a play,
 Comes home to supper, and then falls to dice,
 There his deuotion wakes till it be day,
 And so to bed, where vntill noone he lies.
 This is a Lords life, simple folke will sing.
 A Lords life? What to trot so foule a ring?
 Yet thus he liues, and what’s the greatest grieve,
Gnatho still swears he leads true virtues life.⁶⁰

The degenerate routine described by Guilpin, or inabilities to study in the unfavourable atmosphere identified by Dugdale, were not the only reasons for students’ failure to absorb the precepts of law however. Aside from the lengthy

⁵⁹ Prest, *The Inns of Court*, p.16.

⁶⁰ Guilpin, “Epigram 25,” *Skialetheia* (no sig).

nature of legal training and the amount of time some students spent on what were considered the essential gentlemanly pursuits of music, gaming, dancing, fencing and play going, the system of learning at the inns was largely unsupervised except in instances when an individual private tutor was employed to structure the student's learning. Mastery of the vast mass of "undigested particulars" that constituted the common law was challenging and rigorous.⁶¹ Lack of close supervision perhaps deterred many young men but also seems to have encouraged some individuals to follow their own inclinations in terms of scholarly and artistic development. Indeed, the result of a kind of intellectual liberalism is clearly demonstrated by the achievements of the inns' sixteenth-century alumni, many of whom rose to extraordinary prominence in fields other than the law.

Living then within the unique milieu of the early modern legal institutions were the 'Inns-a-Court' men who (unlike their counterparts at the universities) were exposed to all of London society both high and low within a noisy, vibrant, and busy environment that shared undue proximity with the clamorous stews and playhouses in the adjacent streets across the Thames. It was also a place in which over half of the known translators of the classics between 1558 and 1572 resided, and which nurtured authors whose works were to be of unprecedented political and intellectual importance.⁶² For the young men learning the law during the latter half of the sixteenth century the environment of the Inns of Court was at once both stimulating and hazardous. Aptitude and self-discipline could provide substantial rewards, but political perils awaited the unwary within a milieu of power, license, intellectual freedom and political intrigue. Diversity is the principal feature of the inns at this time, a characteristic that can be applied equally to the membership in terms of

⁶¹ Prest, *The Inns of Court*, p. 142.

⁶² Finklepearl, *John Marston of the Middle Temple*, p.22.

intellect, aptitude, religious persuasion and political affiliation, and also to the production of dramatic and literary works that was taking place within the inns' communities of scholars.

Performing the Law

Law begins life as pure fiction and pure theatre: a claim to an unfounded coherence, and a vector that unites the 'real' world with some ideal state of affairs that it depicts.⁶³

Professor Desmond Manderson's proposition of law as theatre is one among several claims for the importance of relations among theatre, fiction and law today.

According to Manderson's way of thinking, this proposition may be tested through an examination of the link between theatre and the law in the past, for as he rightly claims: "law itself must have an identity – a narrative that ties together its parts and allows them to be read as a story of becoming."⁶⁴ While some members of the modern legal profession may not subscribe to such a hypothesis, lawyers in the past conceptualised the law and drama as sharing fundamental and inseparable qualities. Of particular note in this respect was the nature of early modern legal education, which incorporated an unauthorised but vital dramatic training. It was this training that helped instigate the production of a corpus of works to which members of the Inns of Court contributed as authors, participants, and spectators during the period of unprecedented growth in the English legal establishment during the latter decades of the sixteenth, and the early years of the seventeenth century. From the 1550s until the

⁶³ Desmond Manderson, McGill Shakespeare Moot, "Judgements 2002-2003, In re Attorney General for Canada: ex parte Heinrich [2003] 1 C. of Sh. 1." McGill University, Shakespeare Moot Court < <http://www.mcgill.ca/shakespearemoot> > [accessed 23rd December 2010].

⁶⁴ Desmond Manderson, McGill Shakespeare Moot, "Judgements 2002-2003, In re Attorney General for Canada: ex parte Heinrich [2003] 1 C. of Sh. 1."

inns decline during the interregnum, the formal mode of learning at the inns was augmented by what Paul Raffield describes as an “invisible curriculum:” the masques, entertainments and rituals that were not only intrinsic to the performance of law, but, as Raffield rightly claims, also represented powerful social acts of (non) conformity.⁶⁵ The seasonal lengthy revels, which often continued for several consecutive weeks, involved participation in a form of lived drama, as we shall see. Frequently expressing a mode of wit fashionable amongst the students who organised them, the revels and masques were a major feature of student life. These performances, especially those that were staged after the waning of the courtly tradition that characterised many Elizabethan entertainments, frequently retained some of the generic features of the satires and libels that circulated amongst the inns *literati* in the late 1590s, Shakespeare’s *Troilus and Cressida* being a notable example.⁶⁶ The system of learning at the inns was particularly focussed towards the rhetorical skills necessary for both the practice of law and theatrical performance. Consisting largely of oral training, the learning exercises comprised three major activities that varied slightly in manner at each inn but followed identical principals. Similar in form to the disputations on philosophical principals held in the universities, ‘case putting,’ or bolts, and moots were ritualistic in performance and emphasised the hierarchical organisation of the inns’ community. All levels of membership participated in the most elementary of the learning exercises, which were the regular bolts that took place after dinner in the hall. Students gathered in groups of three to argue points of law on an invented case put by one of the benchers, thus vigorously

⁶⁵ Paul Raffield, “Rhetoric, Religion, and Education at the Elizabethan Inns of Court,” *The Early Modern Inns of Court. Conf. Courthauld Institute, London. 14-16th Sept. 2006.*

⁶⁶ There is no record of a public performance of *Troilus and Cressida* at the inns, but it is generally acknowledged that the play was most likely designed as a kind of closet drama for a private audience there.

testing their power of recall and developing the verbal skills necessary for their participation in the moots and their roles as advocates.⁶⁷

The more formal procedure of mooting required students to prepare a case containing at least one contentious issue of law for presentation in front of the inns' senior members. This form of mock trial was 'judged' by either the benchers or the senior barristers with the students acting as opposing counsel.⁶⁸ The rhetoricians' craft was essential for this exercise and successful performance in moots was the key for progression from inner barrister, or student, to the status of barrister and call to the bar. Dugdale's description of the Order of Sergeants of Law as *narrators* links the performance of advocates with that of the classical orators, whose success depended on their ability to move their audience through the eloquence of their narration, or story telling.⁶⁹ Conflicting versions of events, or conflicting interpretations of the laws were presented by advocates whose theatrical skills as *narrators* were tested through their efforts to convince their audience of the sound reason of their particular argument.⁷⁰

Although contravening Plato's maxims forbidding the fusion of poetry and law, the deployment of poetic skills were central to the adversarial quality of early modern English law, and "dependence on story telling, and the preservation of these narratives in texts or law reports, characterised to a considerable extent the practice of common law" in this period, as Paul Raffield attests.⁷¹ The skills of oration were most highly developed in the lectures, or readings delivered by the senior members, which like the

⁶⁷ Prest, *The Inns of Court*, pp. 115-119. Finklepearl, *John Marston of the Middle Temple*, pp. 9-10.

⁶⁸ A modern counterpart is found in some universities. See for example the McGill University Moot Court which argues modern cases in relation to the 'law' as constituted from a reading of Shakespeare's texts. In the historical context, the students' arguments were delivered in Law French, while the decisions of the Utter Barristers were given in English. See Dugdale, *Origines Juridicales*, p.195.

⁶⁹ Raffield, *Images and Cultures of Law*, p. 24.

⁷⁰ This is discussed in relation to Lucrece's story in Chapter 1, pp. 59-60.

⁷¹ Raffield, *Images and Cultures of Law*, p. 24.

entertainments and revels were surprisingly protracted events that sometimes endured for two or three weeks. Lectures were the most sophisticated of the learning exercises and comprised a reading delivered by one of the practicing senior hierarchy on one of the statutes, or an area of law, followed by extensive general discussion. Relevant cases both real and hypothetical that pertained to the area of law under review were the subject of lengthy debate. It was through participation in these readings, bolts, and moots that men acquired the *comen erudition*, or knowledge of the precepts of law and the necessary skills to execute them, but it was also the way in which the law itself was developed. J.H Baker suggests that a rational body of criminal law evolved through the practices of reading and rigorous academic discussion at the inns, which included debate on criminal law in areas such as abortion and negligence well before these appeared in the law reports.⁷²

It is clear that the authorised instruction at the inns in turn helped shape what Raffield describes as the “invisible curriculum.”⁷³ Evident in much of the drama produced by the inns’ lawyer-authors are the frames of the intellectual, rhetorical, and ritualistic elements of their legal training, which they utilise to produce with conspicuous display a politicised commentary on the power structures of Elizabethan society. Through an emphasis on ideas derived from Neoplatonic humanism, these dramatic productions also use symbolic means to produce an identity for the secular common law as a quasi-religious natural order in which lawyers figure as powerful interpreters and messengers. Buoyed by classical authority, the potency of law thus is shown to be equally matched by the potency of its practitioners whose identity is imbued with the mercurial brilliance of the *narrator*.

⁷² J.H. Baker, “Why the History of English Law Has Not Been Finished,” *Cambridge Law Journal*, 59.1(2000), 62-84 in *JISC Cambridge Journal Digital Archive* <<http://journals.cambridge.org.sussex.ac.uk>> [accessed 23rd December 2010] (pp. 81-82); Raffield, *Images and Cultures of Law*, p.23.

⁷³ Raffield, “Rhetoric, Religion, and Education,” *The Early Modern Inns of Court. Conf.* 2006.

The performances at the inns were characterised by their allusions to Greek mythology and their celebration of classical authors. Responding to the political needs of the moment, the Tudor and early Stuart masques and plays produced gratifying images of the monarch whilst also defining the role of the crown in relation to the constitutional concerns of the ruling elite. James I is characterised as Sol in *The Maske of Flowers*, which recalls the myth of Echo and Narcissus from Ovid's *Metamorphoses*, and Homer's *Odyssey* provides the frame for *Circe and Ulysses* staged at the Inner Temple in 1615. Elizabeth was frequently acknowledged as one of the great female icons of the ancient world and in *Certaine Devises and Shewes*, presented to the Queen at Greenwich in 1587 by the members of Gray's Inn, she becomes Astrea, the daughter of Zeus, who returned to the Heavens as the constellation Virgo.

The Inner Temple revels of 1561-2 were particularly notable, not only for the production of a particularly lavish masque in which Elizabeth was deified as Pallas, Goddess of wisdom, but also as the occasion for the staging of Thomas Norton and Thomas Sackville's tragedy, *Gorbuduc*, or *Ferrex and Porrex*. Modelled on the Roman plays of the politician Seneca, the play was described by Sidney as "clymyng to the height of Seneca his stile," and first appeared in print in a pirated version by William Griffiths in 1565, and again later in an authorised version by John Daye in 1570.⁷⁴ The play's traditional Senecan form suggests its authors as situated within a distinct coterie of learned lawyer/authors associated with the inns, who began to

⁷⁴ Thomas Sackville and Thomas Norton, *The Tragidie of Ferrex and Porrex set forth without any addition or alteration but altogether as the same was shewed on stage before the Queenes Maiestie, about nine years past, vz. The xvij. day of Ianuarie. 1561. by the gentlemen of the Inner Temple.* . (London: 1570), STC (2nd ed.) / 18685, 99857150 < <http://eebo.chadwyck.com> > [accessed 23rd December 2010] Huntingdon Library and Art Gallery. All references are to this edition and hereafter cited parenthetically in the text *FP*; Sir Phillip Sidney, *An Apologie for Poetrie* (London: 1595), quoted in Graves, *Thomas Norton: The Parliament Man*, pp. 91-92. See Graves for full details of Thomas Norton's publications, pp.91-92.

develop a keen interest in Seneca and his works during the 1560s. This interest prompted the translation of a large part of the Senecan canon and in 1559 Jasper Heywood (1535-98) translated Seneca's *Troas*, which he followed with *Thyestes* in 1560 and *Hercules Furens* in 1561 – the same year that he took up residence at Grays Inn. Alexander Neville (1544-1614), who was part of a literary circle that included Gascoigne and Googe, translated *Oedipus* in 1563, and later, in 1566, John Studley (ca. 1545-90?) translated *Agamemnon*, *Medea*, and *Hercules Oetaeus* followed by *Hippolytus* in 1567.⁷⁵ Like the production and circulation of satiric and lyric verse, the production of these translations represented a self-defining exercise and a politicised form of expression that forged social and intellectual links between the respective authors. The creation of Sackville and Norton's adaptation, which in form closely follows the examples made available by the recent translations of Seneca's works by the authors' peers, appears to be rooted in this trend.

As a work written with a particular audience in mind, the staging of Sackville and Norton's play can be best understood in relation to the wider context of the revels of which it was part. Representing a period of license in which an artificial state replaced the normal hierarchy of the inns, the revels season was one in which illusion and drama became the organising principles. The various diversions of dancing, feasting, and martial displays together with performances by the inns' students continued throughout the festivities and were attended by important guests, who in the Christmas season of 1561-2 included members of the Queen's Privy Council, and dignitaries from the Inns of Court and Chancery. In accordance with the usual tradition, a Christmas Prince, or Master of Revels was appointed who created an Order of Knights and reigned over the revels world for the duration of the

⁷⁵ Jessica Winston, "Seneca in early Elizabethan England," *Renaissance Quarterly*, 59.1. (2006), 29-88 in *JStore* <<http://www.jstor.org/stable/27588732>> [accessed 23rd December 2010] (pp. 30-31).

celebrations. In the case of the 1561-2 revels however, the custom of casting one of the inns' students in the role was rejected in favour of the appointment of Robert Dudley, Master of the Queens Horse and the particular favourite of the Queen. Unusually this appointment was made not by the inns' students but by the inns' senior hierarchy, some of whom also participated in the proceedings themselves.⁷⁶ Dudley was honoured with the title of Prince after championing the cause of the Inner Temple in a dispute over the jurisdiction of Lyons Inn – a dispute that ended in victory for the Templars after Dudley used his influence with the Queen to affect a favourable outcome.⁷⁷

The links between Elizabethan politics and the 1561-2 revels have attracted much attention from modern scholars of history and literature, particularly in relation to the nature of Elizabeth's relationship with Robert Dudley and the way in which Sackville and Norton's tragedy plays upon the succession concerns of the Elizabethan parliament. As part of the entertainment during the revels in which *Ferrex and Porrex* appeared, another production, that of Arthur Broke's masque of *Desire and Lady Bewty* was also presented for the first time. The staging of Broke's masque is generally understood as a device designed to further Robert Dudley's suit for the Queen's hand in marriage. As a courtship ritual, *Desire and Lady Bewty* follows the conventions of medieval romance literature and a version of the story appears in an earlier romance, *Pastime of Pleasure* (1509) written by Stephen Hawes and reprinted in several editions in the 1550s.⁷⁸ The popularity both of *Ferrex and Porrex* and *Desire and Lady Bewty* is in no doubt as both were repeated for the Queen at Whitehall on the eighteenth of January, a few weeks after the original performances at

⁷⁶ Bland, *Three Revels from the Inns of Court*, p.13.n.

⁷⁷ Marie Axton, "Robert Dudley and the Inner Temple Revels," *The Historical Journal*, 13.3 (1970), 365-378 in JStore < <http://www.jstor.org/stable/i345253> > [accessed 23rd December 2010] p.365; Bland, introduction to *Three Revels from the Inns of Court*, pp.12-13.

⁷⁸ Bland, *Three Revels from the Inns of Court*, p.44. n.

the Inner Temple. Taken together the productions are understood to comprise a political project: that of the dramatisation of the lawyers' advice to Elizabeth regarding the questions of her marriage and the succession. As such they illustrate the paramount concern of Parliament as that of securing the Protestant succession, and the illustration of a possible solution to the problem in the marriage of Elizabeth to Dudley.⁷⁹

In spite of a high level of academic interest in the 1561-2 revels, a definitive timetable of events is yet to be discovered and evidence is largely based on the surviving records of the Inner Temple and the few eyewitness accounts written by the authors' contemporaries. There are also some details regarding the traditional rituals of the inns' Christmas feasts in Dugdale's *Origines Juridicales*.⁸⁰ Of these sources, Gerard Legh provides the most useful account of the revels in his book on heraldic devices, *Accedens of Armory* (1562), in which he includes a description of the masque of *Desire and Lady Bewty*, although there is no specific mention of *Ferrex and Porrex*.⁸¹ A short note about the 1561-2 revels also appears in Henry Machyn's diary:

The xxvij day of December cam ryding thugh London a lord of mysrull, In clene complett harness, gylt, with a hondered grett horse and gentyll-men rydng gorgyously with chenes of gold, and there horses godly trayptt, unto the Tempull, for ther was grett cher all Cryustynmas ... and grett revels as ever was for the gentyllmen of the Tempull evere day, for mony of the conselle was there.⁸²

Machyn's suggestion that these were the "great(est) revels as ever was" at the Temple is borne out by Dugdale's revelation of the burdensome cost of one pound apiece that

⁷⁹ Marie Axton, "Robert Dudley and the Inner Temple Revels," p.374.

⁸⁰ See Bland, appendix, *Three Revels from the Inns of Court*, pp.116-22.

⁸¹ Further references are cited parenthetically in the text A.

⁸² *The Diary of Henry Machyn Citizen and Merchant-Taylor of London from A.D. 1550 to A.D. 1563*, ed. by J.G. Nichols (London: 1848), pp.273-4.

was levied on every member of the inn in order to ensure the lavishness of this particular occasion.⁸³

The conspicuous display in the entertainments of 1561-2 is also suggested by heraldist Gerard Legh whose narrative of the proceedings is couched in the words of a visiting stranger to the inns and does much to convey the atmosphere of illusion prevailing in the revels' world during the period in which Sackville and Norton's play was staged. Like *Ferrex and Porrex, Accedens of Armory* had a political purpose. Although Legh's work merely purports to be a collection of heraldic woodcuts, such symbols of power were politically contentious. A recent infamous infringement was Mary Stuart's proclamation of her right to the English throne by her audacious display of a precise copy of the Arms of England during her reign as the Queen of France.⁸⁴ The political importance attached to visual display in heraldic devices is an example of the authority Elizabethans invested in the symbolic statements of power and intent. Legh's work thus reveals the semiology so important for shaping the inns as institutions endowed with the wisdom and spiritual authority of the ancient world.

The structure of *Accedens of Armory* is unusual. A classic dialectic is used in the presentation of Legh's narrative, which takes the form of a dialogue between two characters of which the author himself is the composite. As this protean figure, Gerard Legh the author becomes 'Gerard' a gracious herehaught/herald, or messenger, who meets and instructs the humble 'Leigh,' a Caligate Knight, in the art of heraldic law. As a compound of these two characters, the author fashions himself as possessing the dual qualities of humility and wisdom necessary for both the Christian humanist scholar and the student of the common law. Gerard the scholar / author and Gerard the herald fulfil a corresponding function. In the same way that

⁸³ William Dugdale, "Description of Christmas at the Inner Temple," appendix, in Bland, *Three Revels from the Inns of Court*, pp.116-22.

⁸⁴ Axton, "Robert Dudley and the Inner Temple Revels," p.367.

Gerard the herald reveals the secrets of an ancient symbolic order to Leigh, Gerard the author demonstrates its continuation in the real world of the 1560's. Their joint persona is that of messenger, the self-professed role claimed by lawyers as part of their spiritual, moral, and political identity.

An examination of Legh's work helps to situate *Ferrex and Porrex* within the wider figurative context of the revels world. The lawyer-authors of *Gorbuduc* also fashion themselves as messengers in order to present a prophetic vision of the catastrophic events that befall the ill governed state and, like Legh, rely upon classical authority in order to achieve their effects. For Legh, this authority is derived from the euhemeristic tradition of myth as history.⁸⁵ This is apparent in Legh's appraisal of heraldic devices – an appraisal that comprises the first part of Legh's book, which for the sake of clarity may be divided into two parts. The first part of Legh's work is made up of a detailed analysis of the colours, shapes, and symbols on famous 'targes,' or coats of arms. In the second part of the book, a description of the masque of *Desire and Lady Bewty* is framed within an account of Gerard's visit to the Inner Temple with which he entertains Leigh after the lesson on heraldry is complete.

The story within the masque unfolds as Gerard recounts how during his visit to the Temple he meets a stranger, a King of Arms, who tells him the tale of Desire's love for Bewty. This tale Gerard repeats to Leigh. While the story follows the generic conventions of romance literature, we are made aware that this is no ordinary fable. The Lady Bewty is described by Desire as "besydes all ornamentes of Nature, of noble parentage, ryche in possessions, and large of dominion (*A. Fo. 209, r.*)" and not to be won by courtship games of "Dysdayne, with and scornefull lokes (*A. Fo. 209.r.*)."

⁸⁵ Euhemerus, third century BCE. See Seznec, "The Historical Tradition," in *The Survival of the Pagan Gods*, pp. 11-36 for an account of how a euhemeristic belief in the mythical heroes of the ancient world as divinised mortals was a popular concept in medieval culture and into the sixteenth century, and how these great heroes were acknowledged as the founders of the European dynasties.

Desire must first acquire true wisdom and virtue before he can hope to fulfil his quest for union with Beauty. We are told that almost from the beginning of Desire's awakening, when Eolus's "breth of fame" makes Desire aware of Beauty's unique gifts, he is thwarted by the figures of Danger and forward Fortune (*A. Fo. 207.r., 208.r.*). The story continues in the tradition of the quest to relate Desire's difficult pursuit of Bewty. Supported by Counsel, the figure of the lawyer, and the virtues of Governance, Grace and Wisdom, the hero finds his way to Honour's Court in the House of Chivalry where he is created a Knight after the virtues that have aided him in his quest attest to the perils that he has undergone to reach Honour's presence. Duly dressed with the virtuous knight's habit of truth and courage, Desire battles with a nine-headed serpent, the enemy of knighthood personified as dishonour in the shape of nine vices. We are told that after emerging victorious from the combat, Desire makes sacrifice in the Temple of Pallas, where with the permission of the Goddess Pallas he is eventually joined in matrimony with the Lady Bewty. On the completion of the tale, Gerard describes how he hears the sounding of double canon shot before witnessing the bustle of preparation for a grand feast to which the King of Arms immediately invites him. This detail corresponds to the double canon shot that signalled the end of the masque and the beginning of the Inner Temple revels and we may assume that the allegory as told to Gerard is an account of the masque performance as it was performed in front of the audience at the Inner Temple.

Performances of the revels' masques and plays were staged in the inns' Grand Halls and the audience were likely to have viewed the performance of the masque from the vantage of a raised platform or dais at one end of the Hall, with several playing spaces allocated on either side where the various locations of the action could be visualised. D.S. Bland, who has posited this staging of the 1561-2 events, also

suggests that a chorus or narrator may have been employed to explain the function and significance of the many emblematic characters that make appearances during the production.⁸⁶ In order to understand the political implications of the allegory and its place within the revels world at the Inner Temple however, it is necessary to return to the lesson in heraldry provided in the first part of Legh's book. Marie Axton has traced the complex mythic conations that may be wrought from Gerard Legh's text and, as she attests, Legh's prose renders ambivalent the distinction between Gerard's narration and the Templars' enactment of classical fantasy. Nevertheless, in conjunction with Axton's insights the following reading is possible.⁸⁷

Gerard's instruction in the laws of heraldry begins with an account of the devices on the shields of the ancient historical and mythical heroes. The first and most ancient of which he describes as the mirror / shield given to Perseus by Pallas and the very same shield that Ulysses later removed from the city of Troy. Later, Legh will tell how Perseus slayed Medusa after first using the crystalline shield to deflect the Gorgon's deathly gaze from his face, and how Medusa's blood was said to give life to the winged Pegasus, who on his flight to the heavens struck Mount Helicon with his hooves and produced the fountain of Hippocrene "wherein the Muses take their delight and bathe (*A. Fo. 203. r*)."

But first, Gerard concludes his lesson on armoury with a description of "a famous scocheon of renoune (*A. Fo. 202. r*)" that is uniquely linked to his first example: the arms of the second Perseus, Prince Pallaphilos, which displays the Pegasus argent on a field azure. Legh's instruction in heraldry comes full circle, from the shield of the original Perseus to that of his descendant, Prince Pallaphilos, who is described as the very heir of true nobility by natural procreation and attributed with a genealogy that includes not only Jupiter and Perseus, but also

⁸⁶ Bland, *Three Revels from the Inns of Court*, p.44.n.

⁸⁷ Marie Axton, "Robert Dudley and the Inner Temple Revels," pp. 368-72.

Nomos, the *daimon* or spirit of Law (A. Fo. 220. r). Legh thus illustrates the mythic frame for the theme of the revels and the symbolic identity of Robert Dudley as the Prince.

The arms of the Christmas Prince, the ‘famous escutcheon of renown,’ that displays the winged Pegasus resting on the heavenly hue of azure links Robert Dudley, as Pallaphilos, with the arrival of the Muses at the Inner Temple via the fountain of Hippocrene, which Legh describes as having lately burst its banks and flowed over the Temples making them places “meete for Pallas Muses, to inhabite and make theyr pastaunce (A. Fo. 203. r).” Pallaphilos is the agent responsible for bringing the Muses to the inns, and may be construed as the semblance of virtuous Desire in the allegory of *Desire and Lady Bewty*. The warrior Goddess Pallas, to whom is attributed wisdom and patronage of the Arts, together with the Lady Bewty are idealisations of Elizabeth and representative of the Queen’s dual identity as both woman and divine monarch. Desire must make due sacrifice in the Temple of Pallas and seek the permission of the Goddess before he can wed the Lady Bewty thus signifying the distinction between the corporeal body of the Queen as Lady Bewty, and that of the royal body politic as the Goddess Pallas.⁸⁸ The Queen may be wooed as Bewty in her personal capacity, but such courtship is subject to the dictates of her royal position as monarch of the realm.

While the figure of Pegasus associates the revels with the agency of art, the myth of Medusa produces further references that lend the revels’ themes religious import. Later translations of Ovid’s version of the Medusa myth acknowledge Medusa as a “ravish’d virgin,” in whom others claimed, “they ne’er did trace/ More moving

⁸⁸ The theory of ‘The King’s Two Bodies’ is most well known to scholars through the study by Ernst Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957); see also Axton, “Robert Dudley and the Inner Temple Revels,” p.370. Axton points to the distinctions made between the body natural and the body politic of the Queen in the coronation pageants of 1558.

features in a sweeter Face” before she fell victim to Neptune’s licentiousness.⁸⁹

Golding’s translation of Ovid similarly talks of Medusa’s beauty and how “it is reported how shee should abused by Neptune bee / In Pallas Church.”⁹⁰ Legh, however, traces the story not as a rape, but as Medusa’s defilement of the Temple of Pallas through her “filty lust, with that fome God Neptune (A. Fo. 221. r).” The Temple of Pallas is a sacred place as the dwelling of the warrior Goddess. The dreadful punishment for the desecration of this holy place is Medusa’s transformation into the serpent haired Gorgon, whose gaze turns men to stone. Medusa’s golden hair is distorted into “Foule, and hideous Serpentes, the worst of weywarde Aspes,” as she becomes a monstrous version of woman, the antithesis of Christian feminine morality – “a bestlie monstre, horrible to mankynde (A. Fo. 202. v).” Perseus is the virtuous warrior of Pallas, the bearer of the crystalline shield that is eternally imprinted with the ghastly head of Medusa, and the Hero who revenges the profanity in the Goddess’s Temple by riding the world of its perpetrator.

Perseus’s descendant, Prince Pallaphilos, is said to be in possession of the very shield of Perseus, which had protected the great city of Troy until Ulysses removed it prior to the Trojan defeat. This ownership indicates the persona of the Christmas Prince as a powerful protector of the religious state against “Tyrannye and Gorgon nations:” the Church of Rome and its followers. The retention of the shield also represents a celebration of the victory of Pallas over her enemies, and thus a celebration of Elizabeth as victor over the oppression of Catholic rule. Robert Dudley, as Pallaphilos, absorbs the identity of Perseus as “Patron of vertue, the verrie

⁸⁹ *Ovid’s Metamorphoses in fifteen books Translated by the most Eminent hands*, trans. by John Dryden and others (London: Jacob Tonson, 1717), in *Eighteenth Century Collections Online* <<http://find.galegroup.com.sussex.ac.uk>> [accessed 23rd December 2010] (bk.4, p.138). British Library.

⁹⁰ *The fifteene bookes of P. Ouidius Naso; entituled, Metamorphosis*, ed. by Arthur Golding (London: Thomas Purfoot, 1612) STC (2nd ed.) / 18962, 99849016 <<http://eebo.chadwyck.com>> [accessed 23rd December 2010] (bk. 4, p. 55) Henry E. Huntington Library and Art Gallery.

knight of Pallas. whose “zelous affeccion preseruith religion, whose chast disposicion, defendeth places consecrate to goddes from filthie prophanacion (*A. Fo. 222, r*).”

Dudley is Elizabeth’s knight, defender of her honour and by extension the defender also of the established Protestant religion and Elizabeth’s religious settlement.⁹¹

We may remember here that Robert Dudley’s wife had died in mysterious circumstances, a fact that had prompted much speculation regarding Dudley’s ambitions for a union with Elizabeth. The favours extended to Dudley after his intervention in the dispute over Lyons Inn had included the assurance that no legal case brought against Dudley would involve the retention of a member of the Inner Temple, and also the ostensibly frivolous concession that Dudley should be elected Master of Revels for the 1561-2 Christmas celebrations.⁹² The later was no mere whim, however, and the covert influence of lawyers in shaping matters of constitutional importance is here made clear. The supremacy of the legal institution lay in its control over the spectacular display of identity both of the law and the individual. The purpose of Dudley’s role was to provide him with an impeccable identity as a moral crusader of the Protestant cause and to present him as a suitably chaste consort for the Queen.

The method with which the mythic world of Pallaphilos was made believable for an Elizabethan audience may be assessed from a further examination of the layered form of *Accedens of Armory*. As noted earlier in this chapter, the delineation between the illusory mythic world of the revels and the events narrated by Gerard is obscured in Legh’s book. Merging the real with the imagined, Legh is careful to insert within the fictional setting the real hierarchical order of dining that took place during the revels’ feast and notes the sounding of the inns’ trumpets between each course in the

⁹¹ Axton, “Robert Dudley and the Inner Temple Revels,” p.370.

⁹² Bland, introduction to *Three Revels from the Inns of Court*, p.13.

feast. Throughout Legh's work, the symbolic and the real appear in complete harmony as part of an ordered cosmos. Paul Raffield explains that a belief in mythical ancestors was indispensable to both the Christian and Classical worlds because of the way in which both cultures perceived their respective *polis* as emerging from heroic societies. The fact that the characters were fictional was irrelevant.⁹³ This is demonstrated in Legh's text by the way in which the authentic heraldic devices of some of Elizabeth's judges and councillors are construed by Legh to be generically identical to those of obscure historical or mythical characters, and also to those of Solomon, Catulus, and the horsemen of Troy. The lack of demarcation between the real coats of arms of contemporary dignitaries, who included Sir James Dyer, Sir Richard Catlin, and Sir William Cordell, and those both of the ancient heroes and the fictional character of Pallaphilos, suggests the way in which the symbolic order was made tangible for the participants and audiences of the revels and in turn provided a visual statement of the ancient authority handed down to the predominantly Protestant judges and dignitaries of Elizabeth's Privy Council.⁹⁴

It appears that the mythical ancestors of Troy held a particular significance within the symbolic currency of the 1561-2 revels, and as we have seen Jasper Heywood's translation of *Troas* appeared in 1559 and was circulating at the Inns of Court prior to the revels at the Inner Temple. Sackville and Norton's *Ferrex and Porrex* utilises the Trojan theme, and the action is set in the realm of the British King Gorbuduc, the last in the line of the great Trojan Brute. Elizabeth's victory over the tyranny of Catholic rule (symbolised by the retention of the shield of Perseus at the Inner Temple) is seen to be under threat in Sackville and Norton's tragedy, as the fragility of Elizabeth's new kingdom is laid bare.

⁹³ Raffield, *Images and Cultures of Law*, p.83.

⁹⁴ Axton, "Robert Dudley and the Inner Temple Revels," p.368. n.

Illustrating the dangers posed by a lack of clear policy regarding the succession, *Ferrex and Porrex* recounts the catastrophe that ensues in the kingdom of King Gorbuduc after the traditional order of primogeniture is discarded and the kingdom divided between Gorbuduc's two sons, Ferrex and Porrex. True to its Senecan frame, the play explores the political themes of kingship, governance, and tyranny, and includes bloody scenes of murder, regicide, and civil war. Sackville and Norton's tragedy can be seen to reflect the particular concerns of Elizabeth's parliament in its dramatisation of the constitutional rights and responsibilities of the monarch, and its illustration of the role of Parliament in ensuring the security of the realm.

Set in a Britain ruled by king Gorbuduc and his consort, Queen Videna, chaos results from King Gorbuduc's decision to relinquish the crown and divide the realm whilst he still lives. Suspicion and treachery develop between the brothers Ferrex and Porrex, and the ruthless younger brother kills Ferrex who is the rightful heir to the realm as Gorbuduc and Videna's eldest son. Queen Videna, who favours her elder child, revenges the murder of Ferrex by killing Porrex. As the peaceful realm of Gorbuduc descends into anarchy, an outraged populace assassinate Gorbuduc and Videna and rebellion ensues. Vicious suppression by the Nobles fails to undo the harm that Gorbuduc's abuse of the royal prerogative has initiated, and the councillors of the late King Gorbuduc are helpless to call a Parliament with any legal force. In the absence of a legal heir to the throne or a clear line of succession the country is reduced to a wasteland of civil unrest in which murder and rape proliferate. The Duke of Albany's ambition to usurp the crown illustrates the final catastrophe that looms in the form of foreign rule and the subjugation of the British people.

The visual power of the masque is replaced in *Ferrex and Porrex* by the power of language. The lawyers' skills as *narrators* makes Seneca a natural choice as a model

for a play in which the balance and counterbalance of language evokes the high emotion and violent action of the plot. The tumultuous events, and scenes of murder and civil war are communicated through the spoken word and the declamatory speeches of the chorus. A mime or dumb show precedes each of the five acts, which gives a symbolic reading of the ensuing action.

Ferrex and Porrex dramatises the relationship between King and counsel and points to Gorbuduc's failure in his divine duty to govern the realm as the result of his failure to heed the advice of his most learned councillors. Eubulus, Gorbuduc's secretary provides the voice of reason and prudence as Gorbuduc declares to the Council his plans to surrender sovereignty to his sons. The form of the scene between the King and his councillors is imbued with the legal discipline from which it sprang as Philander, Arostus, and Eubulus each weigh the arguments *pro* and *contra* for Gorbuduc's plan. But it is only Eubulus who reminds Gorbuduc of the lessons of history and the calamitous results of Brute's earlier misguided decision to divide his kingdom between his own three sons while he still lived. As Eubulus reminds Gorbuduc, "But how much Brutish blood hath since bene spilt/ To ioyn againe the sondred unitie?... What Treasons heaped on murders & on spoiles? (*FP. Sig. C.1. r.*). " In overturning the law of succession, Gorbuduc subverts the natural law and Philander reasons that "Nature hath her ordre and her course/Whiche (being broken) doth corrupt the state/Of myndes and thinges euen in the best of all (*FP. Sig. B iii.v-r.*). " In spite of Philander's recognition of nature's law, he fails to produce a convincing case against Gorbuduc's plan. The arguments of the councillors show varying degrees of accomplishment and Gorbuduc's failure is his inability to distinguish between the mere flattery of Arotus and the wisdom of Eubulus. Eubulus' prudent and rational argument is ignored and his advice unheeded. Keenly attuned to the stylistic and

rhetorical effects of oration, the audience of lawyers and councillors were left in no doubt as to the judicious wisdom of Eubulus' words.

Produced by authors poised at the centre of constitutional debate, the masques and plays staged at the Inner Temple responded to the particular political moment of their production. While Elizabeth remained without a consort, the dual concerns of the succession and her possible matrimonial alliances figured prominently in the political agenda. *Ferrex and Porrex* portrays the legal right of Parliament to settle the succession as a necessary right to ensure the safety of the realm, and Sackville and Norton dramatise to great effect the fragility of the state in the absence of Parliamentary authority. Gorbuduc's failure to give due consideration to the advice of his counsel results in cataclysmic destruction of the kingdom and the overriding emphasis of the play – the crucial need for monarch and counsel to concur on affairs of state – serves to promote the concept of the collaborative nature of national governance.

Whilst the fundamental necessity for Parliamentary authority is a central theme in Sackville and Norton's tragedy, the play also acts to support the messages contained in the revels' masques. Throughout the play, emphasis is placed on the primacy of a 'natural order' and the desirability of 'rightful heirs' to the throne. Usurping foreign rule by the Duke of Albany is seen as the last calamity for an England without a line of legitimate succession. Susan Doran argues convincingly for an interpretation of the play that identifies it as a further bid for the Queen's favour on behalf of Dudley and those who supported him, and an anonymous eyewitness account of the performance by a chronicler of the time strongly supports her claim:

The Shadows were declared by the Chore firste to signifie unytie, the 2 howe that men refused the certen and tooke the uncerten, wherby was ment that yt

was better for the Quene to marye with the L[ord] R[obert] knownen then with the K[ing] of Sweden...Many thinges were handled of marriage.⁹⁵

The message that Elizabeth should marry and produce an heir in order to restore a 'natural' order and avoid the kind of calamities within Gorbuduc's realm seems clear, and the nationalistic overtones in the play point to the desirability of Robert Dudley rather than a foreign prince as the obvious choice.⁹⁶

As the examples of the 1561-2 celebrations show, the entertainments at the inns were immersed both in constitutional politics and the factional interests of powerful groups. It is clear, however, that not only the politico-religious concerns of a Protestant elite drove the creation and manipulation of signifiers in these entertainments, but also individual ambition, as in the case of Robert Dudley.⁹⁷ In terms of the success of the 1561-2 revels in advancing the political careers and personal aspirations of its participants, it is perhaps significant that some of Dudley's revel's officers were themselves subsequently promoted to roles in central government. Notable amongst these talented young men were Richard Onslow, who became solicitor general and speaker of the House of Commons in 1566-7, Roger Manwood, who became baron of the exchequer in 1578, and Sir Christopher Hatton.⁹⁸ Elizabeth's policy of electing a select group of trusted counsellors together with evidence of her skill in her negotiations with Parliament seems to suggest that some endorsement of the political messages in *Ferrex and Porrex* was forthcoming from the young Queen.

⁹⁵ See Susan Doran, "Juno versus Diana: The Treatment of Elizabeth I's Marriage in Plays and Entertainments, 1561-1581," *The Historical Journal*, 38.2 (1995), 257-274 in *JStore* <<http://www.jstor.org/stable/2639984>> [accessed 23rd December 2010] (pp. 262-263).

⁹⁶ Doran, "Juno versus Diana," p. 263.

⁹⁷ Axton, "Robert Dudley and the Inner Temple Revels," p.375.

⁹⁸ Graves, *Thomas Norton: The Parliament Man*, p.33.

A more personal message, however, may have inadvertently had some resonance for a monarch whose recent rise to power by no means was assured within the matrix of familial distrust and brutal religious factionalism that had characterised Tudor politics prior to Elizabeth's accession. While the play world was designed to emphasise the essential need for Parliamentary authority and to suggest the wisdom of mixed monarchy in the face of human frailty, the failure of Gorbudic's kingdom can, in fact, be seen as attributable to the corrupt relations among the ruling family.

Sackville and North's tragedy portrays familial love as subverted by the self-indulgent and vengeful actions of the ruling family members. The play portrays a father subject to dangerous personal whim, and also the nature of distrust and treachery between siblings vying for the crown. Elizabeth's witness to the volatile nature of her father's personal relations, her own very real personal danger during her sister's bloody reign, and her fortuitous rise to power through Mary's lack of issue and untimely death makes the emphasis on corrupt family relations within the play oddly resonant. Ironically, in view of Elizabeth's reluctance to marry or name an heir, it appears that Eubulus' words - "within one Land, one single rule is best: / Diuided reignes do make diuided hartes (*FP. Sig. C.I. v*)" – were the most significant for the audience member to whom the play was dedicated, and, furthermore, it was a maxim that she continued to follow in spite of efforts on the part both of Parliament and Robert Dudley to bring about a royal match.

The importance attached to the inns' theatrical presentations, as Paul Raffield has made clear, rested on lawyers' self-fashioned status as guardians of an ancient constitution. As scholars, disseminators, and protectors of the incontrovertible legal wisdom of the past, lawyers thus could assert moral and intellectual superiority in analysis of constitutional affairs. This role was not the only claim to authority that

lawyers' enjoyed, however. The intellectualism and artistic prowess of humanistic scholarship, which flourished in the legal establishment in part because of the diverse social and educational functions that the inns served, and in part because of the unique liberalism of common law legal education, imparted to a core of elite young men an indisputable brilliance, which served to associate the status of lawyer/poet with that of the ancient *vates* or visionaries - an identity that many lawyers were keen to adopt. Endorsed in contemporary works like that of Sir Philip Sidney's *Defense of Poetry*, and barrister George Puttenham's *Arte of English Poesie*, the Ciceronian concept of the ancient poet as seer and lawmaker signified artistic creation as intrinsic to the discourse of law and suggested the personae of the lawyer / poet as imbued with something of the moral qualities of the ancient bards. Lawyers thus characterised themselves as mediators, or "*interpositae personae*," whose function was to relay the messages of moral truth and wisdom through words.⁹⁹

Aspiring to an identity analogous with their ancient counterparts, early modern lawyer / poets used a rich semiotic currency derived from concepts within Platonist theory to symbolise their status and to shape their political message. This currency – ever popular in Elizabeth's reign – remained highly prominent within literary culture after James's accession when it was utilised to respond to the demands of a different political order. The following chapter explores how humanist scholarship – and Platonist theories in particular – impinged on the politicised literary culture of the Court in the first decades of the new century, and addresses this question through an examination of the work of writers and thinkers as they responded to the challenges to traditional concepts of morality that were instigated by the Stuart accession.

⁹⁹ For an informative discussion of this concept see Goodrich, "Officium Poetae," pp. 143-144.

Chapter 3

The Legal Poetics of Rule: Morality, Union, and the Politics of Marriage at the Court of King James 1604-1613

We saw in Chapter 1 how morality is constructed in the early modern cultural imaginary in relation to literary and visual representation, and the way in which a tension exists between socio-cultural ideals of morality and justice and the pragmatic applications of the common law legal system. Chapter 2 explained how sixteenth-century literary discourse is developed and absorbed within legal culture, and how early modern lawyers shaped cultural mores through aesthetic representation. In this chapter I probe how morality as an aesthetic construct figures within the wider context of constitutional politics, and we step inside the debates on the meanings of ‘law’ and ‘legality’ that are expressed, often by way of subtext, in authors’ works. As the reign of the last Tudor monarch gave way to the first Stuart accession, writers’ conceptualisations of lawfulness were expressed against the backdrop of political uncertainty, moral anxieties, and of a new perceived threat to national identity.

The prospect of the coalition of England and her northern neighbour following the accession of the Scottish King James VI to the English throne in 1603 produced much speculation as to the desirability, and even the lawfulness of such a union. Writers often construed ‘law’ in this sense in abstract terms; that is in relation to a perceived natural order that transcended the technicalities of constitutional law, although these

too were extensively debated in response to the ideological and legal problems that surfaced with the prospect of unification. The significance of art in political debate and the links between artistic creativity and the discourse of law were well established, as we have seen. In the imaginations of those writing during the first decades of Jacobean rule, drama and poetry continued to be – albeit with a new focus – a supremely authoritative means with which to fashion political ideology and to shape the identities of those in positions of constitutional power.

In a dedicatory poem to *The Most Grave and honoured Temperer of Law and Equitie, the Lord Chancellor*, which appears in a republished version of George Chapman's translations of Homer's *Iliads* and *Odysses* (1616), Chapman resists any charge of the supposed inconsequence of poetic form, and, instead, links poetry to the "graue administry of publike weales," while reasserting the ancient religious identity of the poet-lawyer. Describing how "Royall *Hermes* sing(s) th' Egyptian Lawes," and "*Solon, Draco, Zoroastes* sings / Their Lawes in verse," Chapman urges: "Nor be your timely paines the lesse applied / For poesies idle name; because her Raies / Have shin'd through greatest Counsellors, and Kings."¹ Of the great magi figures of the ancient world to which Chapman refers, the most celebrated is Hermes Trismegistus. Derived from his multiple identities as the god Hermes-Mercury, Hermes Trismegistus becomes a mortal in the euhemeristic tradition, a venerated sage who was thought to have prophesied the coming of Christ and to whom Renaissance

¹ George Chapman, "To The Most Grave And honored Temperer of Law, and Equitie, the Lord Chancelor, &c.," in *The whole works of Homer; prince of poetts in his Iliads, and Odysses*, (1616), STC (2nd ed.) / 13624, 99842478 <<http://eebo.chadwyck.com>,> [accessed 23rd December 2010] (sig. Gg4r, 7134.186) Harvard University Library. All references are to this edition. See Chapter 1, p.54 for details of Chapman's publications.

Neoplatonists accorded a deep wisdom, which they imagined had predated Platonism and had helped to shape the philosophies of Plato and his successors.²

Chapman's assertions here draw on an authoritative esoteric tradition that not only celebrated poetry as a quintessentially spiritual art, but also recognized the syncretism of ancient theological systems. Early modern concepts both of the divinity of the poet and the theological significance of poesy were recovered from the work of Florentine scholars like that of the fifteenth century Neoplatonist Pico Della Mirandola, whose theories of poetic theology were derived both from *The Hermetica*, the corpus of writing mostly attributed to the mythical Hermes Trismegistus, and also from the religious teaching of the Christian saints.³ St Augustine acknowledged that true religion, or "the thing itself (*res ipsa*)," which had been with mankind since the beginning of time, simply became known as Christianity when Christ was made flesh.⁴ In this way Augustine allowed for a partial analogy between the ancient mystical religions and Christianity. St Augustine's thinking follows that of St Paul, whose teaching on the *Areopagus* points to the pagan understanding of Christianised religious principal, which he suggests was derived from the ancient poets themselves: "For in him we live, and move, and have our being; also of your own poets have said."⁵ Thus Chapman's claim that Homer, as poet, reveals "The mysteries of Rule,

² Frances A. Yates, *Ideas and Ideals in the North European Renaissance: Collected Essays*, ed. by J. N. Hillgarth and J.B. Trapp, 3 vols (London: Routledge & Kegan Paul, 1984), III, pp. 105-106; Antoine Faivre, *The Eternal Hermes: From Greek God to Alchemical Magus*, trans. by Joscelyn Godwin (Grand Rapids, MI, USA: Phanes Press, 1995), pp. 13-17; Seznek, *The Survival of the Pagan Gods*, pp.11-13.

³ Edgar Wind, *Pagan Mysteries in the Renaissance* (London: Faber & Faber, 1958), p.21; Yates, *Ideas and Ideals in the North European Renaissance*, p.106.

⁴ Wind, *Pagan Mysteries in the Renaissance*, p.21, citing Augustine, *Retractationes I*, xiii.

⁵ Wind, *Pagan Mysteries in the Renaissance*, p.21, n. Wind quotes The Bible, Acts xvii, 28. See also Frances A. Yates, "Shakespeare and the Platonic Tradition," in *Renaissance and Reform: The Italian Contribution, Collected Essays*, ed. by J.N. Hillgarth and J.B. Trapp, 3 vols (London: Routledge & Kegan Paul, 1983), II, pp. 151-160 (p.156).

and rules to guide/ The Life of Man, through all his choicest waies,” proposes art as an essential aide in the understanding of divine and natural law.⁶

Expounded in the work of Mirandola’s mentor, Marsilio Ficino, to which it is generally acknowledged that Chapman made frequent reference, Ficinian ideals proved particularly pertinent to the lawyer in his role as orator, and to the ruler too. The concepts of the relations among poetry, oratory, law, and divinity are beautifully illustrated in Ficino’s description of the Platonic academy, which is contained within a dedicatory proem in his 1484 translation of Plato. The setting for the Academy is within the celestial garden of philosophy where “poets will hear Apollo singing beneath his laurel tree,” and where “At the entrance to the Platonic Academy orators will behold Mercury declaiming...(and) lawyers and rulers of the people will listen to Jove himself, ordaining laws, pronouncing justice and governing empires.”⁷ The equal placing of lawyers and rulers in the audience of Jove is suggestive of the higher authority to which both Princes and lawyers are subject in equal measure. As Valery Rees suggests in a study of Ficino’s political counsel to royal leaders, rulers are not at the axis of Ficino’s idealised sphere unless they too are philosophers.⁸ For in Ficino’s configuration of the Platonic Academy the pride of place is the inner sanctuary where “Philosophers will acknowledge their Saturn, contemplating the hidden mysteries of the heavens.”⁹ These idealisations of the orator-lawyer and the philosopher-ruler became extremely popular tropes in the imaginative currency of seventeenth-century

⁶ Chapman, “To the Most Grave and Honoured Temperer of Law,” sig.Gg4r.

⁷ Valery Rees, “Ficino’s Advice to Princes,” in *Marsilio Ficino: His Theology, His Philosophy, His Legacy*, ed. by Michael J.B. Allen and others (Leiden: Brill, 2001), pp. 339-358 (p.352), citing Marsilio Ficino, preface to *Platonis opera omnia* (1484), pp. 1129-30. For a useful discussion of the Renaissance Platonist academies and their historical development see Yates, *The French Academies of the Sixteenth Century*, pp.1-3.

⁸ Rees, “Ficino’s Advice to Princes,” p.352.

⁹ Rees, “Ficino’s Advice to Princes,” p.352, citing Ficino, *Opera Omnia*

court writers and were used to extraordinary effect in shaping the political poetics of the Jacobean court.

Partially sanctioned as it was through the authority of the church fathers, the Christianised Neoplatonic sentiment regarding the relevance of ancient pagan archetypes was one that the new Stuart King appeared to share. A skilful strategist and a classical scholar, James responded to his role as successor to the mighty *Astrea*, the virginal Elizabeth Tudor, by fashioning himself as a philosopher-king and embracing an irenic identity that was itself linked to the great legislators, peacemakers, and poets of the ancient world. Modelled on the Ficinian ideal, James's royal image was used in shaping the representation of his semi-divine and lawful kingship in a variety of literature, which included not only the texts of the extravagantly financed court masques, but also those of Sir Francis Bacon and, not least, the learned works of James himself. Bacon, in celebration of James's image as peacemaker, personifies his monarch as the 'thrice great' Hermes Trismegistus:

So as your
Maiestie standeth inuested of that triplicate, which
in great veneration, was ascribed to the ancient Her-
mes ; the power and fortune of a King ; the know-
ledge and illumination of a Priest; and the learning
and vniuersalitie of a Philosopher.¹⁰

The moral philosophy associated with the *prisca theologia*, or the "ancient theology" (and thus Trismegistus) encouraged a religious liberalism in relation to theological controversy, an outlook demonstrated by the balanced attitudes adopted by the religiously tolerant *politiques* in France.¹¹ This tolerance was apparently matched by James's own. Appeals to the moral and religious tenets of ancient theology provided

¹⁰ Bacon, *The tvvoo bookes of Francis Bacon*, I, sig. A4v.

¹¹ Yates, *Ideas and Ideals in the Northern European Renaissance*, p 107.

a means to sanction James' political stance in relation to religious controversy, while such appeals also provided a device for writers of the period to circumvent the doctrinarism of religious dispute and to deliver moral, legal, and political messages in a religiously neutralised form.

The mode of detachment provided by the veiled truths of Platonist signification was replicated, although in a completely different way, in some of the satiric writing of the period. Running counter to the panegyric to greatness and good that was so often couched in Platonist terms, satire, and the 'animal satires' of the early seventeenth century in particular, appealed to concepts of natural justice (as opposed to the positive law of legal jurisdiction) as a means to question, in a safely neutralised format, the morality and questionable legality of actions undertaken in the name of the King. Satiric writing could also lay claim to a moral imperative that worked to uphold the satirist's role as one identifiable with the ancient poet-lawyers. As David Colclough suggests, the orator is traditionally characterised as "a perfect man skilled in praise and blame," a concept shared by lawyer and poet George Puttenham who understands poetry's moral task as, first, the praise of the immortal gods and the lauding of good men, and secondly, as blame: the "reprooffe of vice, the instruction of morall doctrines."¹² Thus an important moral agenda for the poet is the rooting out of the bad, and, in the words of Sir Philip Sidney, the desire to replace it, and "plant goodness even in the secretest cabinet of our soules."¹³

The poet's task in rooting out evil and instilling good appealed to the concept of natural law, and the satiric verses that criticised James and his Court frequently relied on just this concept. Early modern appeals to natural justice rest on the theory of a law

¹² Colclough, "Verse Libels and the Epideictic Tradition," p.19. Colclough cites Coluccio Salutati, *De laboris Herculis* found in O.B. Hardison Jr., *The Enduring Monument: A Study of the Idea of Praise in Renaissance Literary Theory and Practice* (Chapel Hill: North Carolina Press, 1962), p.36, and George Puttenham, *The Arte of English Poesie*, (London: 1589), sig. E2r.

¹³ See Chapter 1. p.64.

that is inscribed in nature and is thought to reflect divine rationality. Understood by its exponents to be known to man through the power of human reason (*ratio*) and conscience, natural law both orders and transcends man's law, and is a form of knowing that instinctively encourages the seeking of virtue and repudiation of vice as a means of assuring the survival of humanity.¹⁴ Early modern satirists, by fulfilling their moral duty by reproofing transgression, could thus lay claim to a moral purpose that was authorised both by the religiosity and form of the classical poetic tradition. Before examining in more detail the significance of Platonist and satiric forms, and how contesting moralistic / legalistic literary responses to the first Stuart King and his Court were couched, however, it is apposite first to consider the political milieu in the years following Elizabeth's demise, when the Scottish King was seeking to effect a new style of kingship in a fractiously divided English society. One of the most important legal, constitutional, and personal issues for the new monarch was that of the unification of England and Scotland, an issue that was to have far reaching consequences for the legal status of foreigners, or 'aliens,' in the seventeenth century and beyond.

The Politics of Peace

After forty years of gynaecocracy and the perceived attendant problems of female rule, a married male Protestant, already the father of natural heirs, succeeded to the English throne. It seems that the concerns of those Elizabethans like Thomas Norton, who campaigned so tirelessly for a suitable marriage settlement for the Queen in order that a Protestant succession could be affected, would now be put to rest. Indeed, Sir

¹⁴ R.S. White, preface to *Natural Law in English Renaissance Literature* (Cambridge: Cambridge University Press, 1996), xi, see also pp. 95-97.

John Harington, who had been a member of Lincoln's Inn until 1583 and was the godson of Queen Elizabeth, greeted the new monarch with his *Tract on the Succession to the Crown* in which he hailed James as "a man of spirit and learning," who appeared to compare favourably with the ageing Elizabeth: "A ladye shutt up in a chamber from all her subjectes and most of her servants."¹⁵ Whilst many greeted the Jacobean accession with great anticipation, James failed to fulfil the expectations of many of the noble elite. Panegyric of the period shows that the qualities of the new male monarch were celebrated, not as those of martial skill, bravery, and militaristic heroism traditionally attached to the image of aristocratic masculinity but, as we have seen, as those of the pacifist politician.

James cultivated a mode of monarchic representation that denoted the powers of intellect, philosophical understanding, and political acumen as those most necessary to secure the survival and prosperity of the realm. Such representation reflected the political strategies of the Stuart court, which included moves both to secure English neutrality in the religious conflicts in Europe, and towards a balancing of religious factionalism at home. James's style of rule as *politique* was deeply unpopular with those who favoured a policy of Protestant intervention in European affairs, and who abhorred the perceived effeminacy and weakness of military inaction.¹⁶ Only two or three years previously military inertia was being linked in the popular imagination with a malaise in the Kingdom that threatened its very existence. As Shakespeare's Ulysses attests in relation to the disruption of the natural God given order, or "degree," demonstrated by Achilles' effeminising languor within the play world of

¹⁵ David Lindley, "Campion's Lord Hay's Masque and Anglo-Scottish Union," *The Huntington Library Quarterly*, 43.1 (1979), 1-11, in *JStore* <<http://www.jstor.org/stable/3817277>> [accessed 23rd December 2010] (p.8). Lindley quotes Sir John Harington, "Tract on the Succession to the Crown," ed. Clements R. Markham (London: 1880), p.51.

¹⁶ See Peter Holbrook, "Jacobean masques and the Jacobean peace," in *The Politics of the Stuart Court Masque*, ed. by David Bevington and Peter Holbrook (Cambridge: Cambridge University Press, 1998), pp. 67-87.

Troilus and Cressida: “Oh when degree is shaken / which is the ladder to all high designs / The enterprise is sick (1.3.101-3).” This philosophy, which had characterised martial combat in war as the proving ground of individual and national honour, had helped shape the English noble tradition and had provided a politico-religious identity for a generation of English aristocrats.”¹⁷ It was grounded in a mode of thought that characterised the Reformation as a victory over the corrupt Church of Rome – the defeat of “The Whore of Babylon” in the words of John Foxe – and had encouraged a glorification of war which linked aristocratic honour with conquest, and cast noble militarists as heroes of a Christian ethic.¹⁸ According to churchman John Wilson, it was the aristocratic peers who “make good with their swords what the Church doth allow and bless with Prayers...these be the Stars of the State. We know the Stars have fought and fought mightily against God’s enemies.”¹⁹ Aristocrats like Sir Philip Sidney, Sir Walter Raleigh, and the Earls of Leicester and Essex, who had celebrated the *virtu* of mortal combat and upheld the code of Protestant-chivalric honour, were in the opinion of many of the Stuart Protestant nobility the architects of England’s greatness.²⁰

The young third Earl of Essex, whose title was reinstated by James following his father’s political defeat and subsequent execution in the last years of Elizabeth’s reign, acted as a living *aide de memoir* of the great Earl and the tradition that he had represented, and thus provided a tangible focus for his father’s sympathisers and former co-conspirators.²¹ As Mervyn James notes, the young Essex, as “a legatee of

¹⁷ Steven Marx, “Shakespeare’s Pacifism,” *Renaissance Quarterly*, 45.1 (1992), 49-95, in *JStore* <<http://www.jstor.org/stable/2862831>> [accessed 23rd December 2010] (p.51).

¹⁸ Holbrook, “Jacobean masques and the Jacobean peace,” p.70.

¹⁹ Vernon F. Snow, “Essex and the Aristocratic Opposition to the Early Stuarts,” *The Journal of Modern History*, 32.3 (1960), 224-233, in *JStore* <<http://www.jstor.org/stable/1872425>> [accessed 23rd December 2010] (p. 227).

²⁰ Marx, “Shakespeare’s Pacifism,” p.51.

²¹ Snow, “Essex and the Aristocratic Opposition to the Early Stuarts,” p. 224.

Sidneian chivalric romanticism,” represented a tradition that sought formal Protestant alliances in Europe, increased resources for military commitment on the continent, and an extended naval assault on the empire of Spain.²² This quest for power was considered by some to be an inherent element in the warlike nature of man and thus an essential part of a natural order that made warfare inevitable. Just this cynicism is identified in Sir Walter Raleigh’s translation of Machiavelli’s *Discourses*:

There is not in nature a point of stability to be found; everything either ascends or declines: when wars are ended abroad, sedition begins at home, and when men are freed from fighting for necessity, they quarrel through ambition... I put for a general inclination of all mankind, a perpetual and restless desire after power that ceaseth only with death.”²³

For the Essexians, action in war rather demonstrated their masculinity, shaped their identity in terms of religious faith, and proved their honour, whilst in the imagination of some dramatists and poets the nature of ‘typical’ English valour against foreign antagonists signified the English nation as proud, godly and free.

The creed of militarism lingered in the collective imagination, but it was by no means universally condoned, nor had it been subscribed to by some of the most eminent humanists of the sixteenth century.²⁴ Desiderius Erasmus’s *The Education of a Christian Prince*, (*Institutio Principis Christiani*), 1516, and *The Complaint of Peace*, (*Querela pacis*), 1517; Sir Thomas Elyot’s *Book of the Governor*; Baldassare Castiglione’s *The Courtier*; Roger Ascham’s *Schoolmaster*; and the works of Sir Thomas More and Juan Vives all contribute to a Christian humanist tradition of pacifism, and although men like Erasmus and Sir Thomas More accepted that war was

²² Mervyn James, *English Politics and the Concept of Honour: 1485-1642*, Past and Present Supplements;3 (Oxford: Past and Present Society, 1978), p. 72; Holbrook, “Jacobean masques and the Jacobean peace,” p.85, n.

²³ Marx, “Shakespeare’s Pacifism,” p.51, citing Sir Walter Raleigh, *Works VIII*, 293, translating Machiavelli’s *Discourses*.

²⁴ Marx, “Shakespeare’s Pacifism,” p.53.

sometimes necessary, they proposed a moral opposition to warfare and rejected the claim that war could be perceived as an ethically neutral means of achieving political ends.²⁵ While a combination of neo-chivalric martial prowess and the quest for heroic conquest shaped the ethos of the Essexians, and particularly that of individuals like contemporary historian Arthur Wilson for whom this ethos signified the distinct qualities of “old English honour,” the vexed questions relating to ideologies of war and peace continued to be deeply contested both before and after the Stuart accession.²⁶

The first masque commissioned for the new court, Samuel Daniel’s *The Vision of the Twelve Goddesses*, illustrates just how the contesting ideologies of war and peace impinged on literary court culture. Daniels’s masque, which was performed at Hampton Court in 1604 and written for Queen Anne and her ladies, exhibits an ambivalence that is a common feature of many of the entertainments of the period. While employing a familiar classical imagery, *The Vision of the Twelve Goddesses* demonstrates the strain in a mode of representation that harks back to the Sidneian heroic neo-chivalric code whilst uncomfortably celebrating the “glory of peace.”²⁷ In the dedicatory epistle to the Duchess of Bedford published in the authorised version of the text, Daniel is careful to distinguish the sole (peaceful) attributes attached to his twelve goddesses and denies their “diverse significations,” but the conventional imagery attached to the “war-like Pallas,” and also to Tethys, who is both “Albion’s fairest love / Whom she in faithful arms doth deign to embrace” and the representative of the military power over the seas, threatens to undermine the irenic ideology to

²⁵ Marx, “Shakespeare’s Pacifism,” p.53. See also Holbrook, “Jacobean masques and the Jacobean peace,” p.71.

²⁶ Snow, “Essex and the Aristocratic Opposition to the Early Stuarts,” p. 227, quoting Arthur Wilson, *The History of Great Britain* (London: Richard Lowdons, 1653).

²⁷ Holbrook, “Jacobean Masques and the Jacobean Peace,” pp. 75-76.

which the text is dedicated.²⁸ James, however, did not rely on the literary and artistic creations of others to generate political support in relation to his peace objectives. The King was himself an able scholar, a prolific author, and a skilful politician, and his works reveal him to be also a clever manipulator of his public image and a shrewd self-publicist.

Royal Representation and Legal Poetics

Two documents in particular are demonstrative of the poetics of rule that emerged prior to James's accession. Each suggest in various ways James' lawful rights, both spiritual and temporal, and his moral suitability to succeed to the English throne. Suggestive to some of the absolutist role that James envisaged for himself as King, these texts foreground the issues of national identity, personal morality, and constitutional policy that were to so occupy the King's political opponents, and which were destined to engage the pens of a generation of seventeenth-century writers. In 1599 James's *Basilikon Doron* was published in Edinburgh as if in anticipation of the scrutiny to which his style of kingship would be shortly subjected. Like that in *The Workes of the most high and mightie prince, James*, published in 1620, the front piece of *Basilikon Doron* indicates a commitment to pacifist ideology with a depiction of the female figure of peace clasping the branch of an olive tree as she stands guard over the prostrate figure of her enemy.²⁹ In the same year that *Basilikon Doron* was published an anonymous treatise penned under the pseudonym of *Irenicus*

²⁸ Samuel Daniel, "The Vision of the Twelve Goddesses," in *A Book of Masques In Honour of Allardyce Nicoll* ed. by Joan Rees (Cambridge: Cambridge University Press, 1970), pp.17-42.

²⁹ James I, *The workes of the most high and mightie prince, James*, (London: 1620) STC (2nd ed.) / 14345, 99857150. <<http://eebo.chadwyck.com>> [accessed 23rd December 2010] Henry E. Huntington Library and Art Gallery, and James I, *Basilikon doron, Devided into three bookes* (Edinburgh: 1599), STC (2nd ed.) / 14348, 99836898. British Library.

Philodikaos appeared, which declared the legal right of the Scots King to succeed to the English throne after Elizabeth's demise.³⁰ Emphasising the benefits to the English nation of a peaceful transition of rule, the treatise skilfully forestalled objections to James's accession, including James's status as an 'alien,' and the awkward fact of Henry VIII's (supposedly forged) will, which had favoured the descendants of Henry VII's younger daughter rather than those of the elder, Margaret, from whom both James's parents had descended.

The declaration of right was a timely and persuasive document that promoted the concept of an orderly royal succession in line with the laws of primogeniture and ancient custom. With the supposed legality of the claim for accession to the English throne thus established in print, James's suitability for the role of King of England was promoted with an amended publication in England of *Basilikon Doron* in 1603. Fashioned in the style of an advice manual to the young Prince Henry, *Basilikon Doron* employs a rhetoric of virtue and humility while purporting to instruct Henry in the "godlie and virtuous education" necessary for a Christian prince and, in so doing, illustrates an idealised mode of royal behaviour which publicises its author's own exemplary suitability for the role of king.³¹ In spite of James's scholarly claims, however, his royal behaviour and philosophy of rule were to be closely scrutinised and heavily criticised after his accession to the English throne in 1603.

The economic and political difficulties that beset England during the waning years of Elizabeth's reign had helped breed a fractured, discordant, and dissatisfied society.

³⁰ Irenicus Philodikaos, *A Treatise DECLARING AND confirming against all obiections the just title and right of the moste excellent and worthie Prince, Iames the sixt, King of Scotland, to the succession of the croun of England*, (Edinburgh: 1599), STC (2nd ed.) / 19881.5, 52633325. <<http://eebo.chadwyck.com>> [accessed 23rd December 2010] Trinity College (Dublin, Ireland) Library.

³¹ James I, "TO HENRY MY DEAREST SONNE, and naturall successor," in *Basilikon doron, Or His Maiesties Instructions to his dearest sonne, Henry the prince* (London: the company of Stationers, 1603),. STC (2nd ed.) / 14354, 99843242<<http://eebo.chadwyck.com>> [accessed 23rd December 2010] (sig. A2r) British Library.

Adding to these difficulties, James's style of government was perceived by some as dangerously inept. Fuelled both by the incisive xenophobia that was directed towards the King's Scottish peers and the perception of James's unseemly predilection for male favourites, factionalism became rampant, whilst James's pacifism (asserted in his personal maxim of *Beati Pacifici* – blessed are the peacemakers) was deeply unpopular with those who resisted the tactical appeasement of foreign powers. Indeed, this policy of appeasement was characterised as cowardly and unpatriotic by James's opponents, including, as we have seen, members of a powerful group who were the friends and supporters of the third Earl of Essex.³² The factional criticism directed toward James's style of kingship is echoed in the mocking tone of Jacobean drama and literature, which continued with a new ferocity the fashion for satire that had become popular during the last decades of the sixteenth century.

Court Satire 1604-1616

Appealing to concepts of natural law, and adopting the theme of the legal trial, a distinct form of poetic satire that serves to relate the perceived moral degeneracy heralded by the new Jacobean order is found in the series of early seventeenth-century animal fables fashioned in the style of Spenser's *Mother Hubbard's Tale*. Appearing both in manuscript and also in print, Michael Drayton's *The Owle*, first published in 1604; and two works by Richard Niccols, *The Cuckow* published in 1607, and *The Beggars Ape*, which circulated in manuscript form prior to 1610 before its publication in 1627; together with a slightly later work, Williams Goddard's *The Owle's Araygnement* (1616), all allegorise the immorality of Jacobean elite society through a

³² Holbrook, "Jacobean masques and the Jacobean peace," p.71.

series of adversarial scenes in which the corruption to the natural order is the major theme.³³ These works frame the hope that moral transgressions that subvert the natural order will inevitably be punished through a natural justice, even if man's law proves inadequate in bringing to justice those in high office or positions of power, or if it is prevented from doing so.

A disquieting reversal of natural hierarchy is seen in Niccols's *The Cuckow*, when the notes of the sweet sounding nightingale are deemed inferior to the harsh, jarring song of the cuckoo. The verdict on the hapless Nightingale's song takes place during a trial in the corrupted Bower of Bliss, where the lascivious Cuckow wins his case to be the herald of spring in a courtroom populated with immoral nymphs. Similar corruption is depicted in Drayton's *The Owle*, when a group of dominant and immoral birds stage the fraudulent trial of an innocent wagtail. More controversially, Goddard's *The Owle's Araygnement* presents a trial scene in which it is revealed that the natural order had been overturned by the murderous actions of the King's hawks and the abuse of the royal prerogative by the eagle King. Although seemingly contained both by their obscurity and their guise as simple animal fables, these works adopt a subversive form of literary imagining that points to the disjuncture between the natural moral law and man's law, and raises the spectre of the common law in thrall to the despotism and greed of those in power.

It is the dishonest members of the legal profession who are under attack in the first of this series, Drayton's *The Owle*, in which the lascivious Cuckoo brings a slander

³³ See Hoyt H. Hudson, "John Hepwith's Spenserian Satire upon Buckingham: With some Jacobean Analogues," *The Huntington Library Bulletin*, 6 (1934), 39-71 in *JStore* <<http://www.jstor.org/stable/3818165>> [accessed 23rd December 2010]. Hudson discusses these works in relation to the tradition of beast satires and their Spenserian connections.

case against the guiltless Wagtail.³⁴ The Cuckoo is bent on defending his ostensibly blameless reputation, but the trial is shown to be a sham when the Cuckoo's advocate, the indolent Peacock, who with a cunning speech "To help his client and uphold his trade," falsely attests to the Cuckoo's innocence and evokes his client's impeccable lineage as proof of indisputable virtue (sig. F3r). Happily, the Peacock is bested by the able Turkie-cock – "A learned lawyer (worthy of his gowne)" – who insists the jury uphold morality for both commons and nobility alike:

His song still tends to vanitie and lust
 Amorous deceits; polygamies unjust.
 But to cut off these tedious allegations,
 The Lawe commands these publicke defamations,
 Be straightly punish'd in the Noblest men.
 Why should you spare the cursed *Cucco* then (sig. F3r-Gv)?

The Turkie-cock successfully argues for the power of the moral order over the authority conferred by the prestige of earthly titles – an appeal to natural justice and an allusion to the perceived abuses of power by those in positions of authority.³⁵

Here, in Drayton's text, the Cuckoo is publicly castigated and sentenced to banishment, while justice is also brought to bear on others caught in dishonourable acts. As a double-tongued flatterer who debases poetry and feigns vast knowledge of affairs, the Jay is condemned of duping the Woodcock, while the Bunting has been caught purchasing a bishopric and trading a benefice to the Lark. Together with several others, these offenders are sentenced to suffer from malaise and disease: "The *Buzzard* of the Letergie is sicke / The *Kyte* with Fevors falleth Lunaticke / The Epilepsy grew upon the *Jaye* / And of a sweat the *Bunting* drops away (sig. F3r-Gv)."

³⁴ Michael Drayton, "The Owle," (London: E. White and N. Ling, 1604), STC (2nd ed.) / 7213, 20212127. <<http://eebo.chadwyck.com>> [accessed 23rd December 2010] Harvard University Library. All references are to this edition and cited parenthetically in the text.

³⁵ Hudson, "John Hepwith's Spenserian Satire Upon Buckingham," p. 68.

The court, which is steeped in “Customes so old, as almost out of minde,” ensures that natural justice ensues in spite of the labours of the Peacock lawyer (sig. F2r). The sovereign Eagle (James) is seen to pass judgement on his offending flock’s sins with a speech that warns of the dire consequences that result from disruption of the natural order. In view of the Eagle King’s attempted restoration of order in Drayton’s work, *The Owle* can be read as a critique of Jacobean society that avoids censure by allegorically absolving the sovereign from any responsibility for the abuses carried out by his subjects.

Drayton’s reference to the “amorous deceits; polygamies unjust (sig. F3r-Gv)” practiced by those in high places – or the sexual proclivities of James’s court – is a theme that recurs in Niccols’s *The Cuckow*, and while Drayton’s work focuses toward a kind of social immorality in the double standards that work to mask corruption, *The Cuckow* specifically attacks the perceived sexual impropriety at James’s court.³⁶ As we have seen, in this the first of the two beast satires by Niccols, the natural order is reversed when the lascivious Dan Cuckow, “a bird hatcht in that houre / When Mars did sport in Cythereas bowre (p.2),” ousts the chaste and virtuous Casta / Philomela as the harbinger of spring. Nurtured in “faire Phoebes owne deare brest,” Philomela is put on trial after Dan Cuckow claims that it is he who is the rightful herald (p.3). Within the decadent setting of the Bower of Bliss where virtuous order is inverted, the cracked tones of Dan Cuckow are chosen over the clear voice of the chaste Philomela, the nightingale. As the defeated Philomel searches for a new place to roost, she discovers from her sister, the unfortunate Progne, that the Cuckow’s corrupting influence has become widespread. Frequenting the tall towers of Trynobantum

³⁶ Richard Niccols, *The Cuckow*, (London: W. C[otton], 1607) STC (2nd Ed.,) / 18517, 99848435 <<http://eebo.chadwyck.com>> [accessed 23rd December 2010] Henry E. Huntington Library and Art Gallery. All references are to this edition and page numbers cited parenthetically in the text. See also Hudson, “John Hepwith’s Spenserian Satire upon Buckingham,” p.65.

(London), Progne has occasion to nest under the high windows of the courtiers' chambers and she reveals in specific terms the corrupt sexual practices that are taking place within:

My meaning is of such
 As imitate Romes *Semiamida*,
 Or that Italian *Cortigiana*,
 And put in practice th'art of *Aretine*,
 At which both heauen and nature doth repine,
 And with that Lybian lustfull foule *Syrena*,
 That woman monster *Dodecamechana*
 In *Venus* act devise twelve sundrie measures
 With lustie lads at full to take their pleasures;
 Nor will I tell, though many be of these
 That with *Athlanta* and *Hippocmenes*
 Do *Stalion*-like run madding out of season
 To quench their lust, 'gainst nature and 'gainst reason (p.45).

Against nature and human reason, the debauchery breaks the moral code inscribed in natural law, and is described here by Niccols in Juvenalian satiric mode to allude to the accusations of sexual immorality levelled against James and his entourage.³⁷

The figure of the Cuckoo is a standard literary trope within this genre and signifies both sexual immorality and usurpation. *The Cuckow's* eponymous anti-hero is an alien orphan fostered in Egypt (Scotland), who devours his nurse after usurping her nest. Surprisingly, given the potential associations between the alien bird and the alien motherless King, *The Cuckow* was published under the author's own name but apparently avoided royal censure, both in terms of the possible identity of the Cuckow, and also in relation to the obvious allusions within the work to the sexual immorality at James's court.

³⁷ Hudson, "John Hepwith's Spenserian Satire upon Buckingham," p.64. Hudson finds a precedent for this passage in the sixth and eight Satires of Juvenal.

While, as we have seen, Drayton's *The Owle* appears to absolve the monarch from responsibility for the abuses carried out by his subjects, Goddard's *The Owles Araynement* explores just this issue with a different conclusion. As in Drayton's work, it is the usurping Cuckoo that is once again one of the protagonists of vice in Goddard's satire.³⁸ Brought to justice in front of the Prince of Fowles and charged with both killing other birds and making disturbances in the night with her shrieking voice, the virtuous Owl is asked by the sovereign Eagle to speak truthfully in answer to her charges. The Owle thus tells how the lascivious Cuckoo is living in the city and occupying another's nest in the house where Silvanus – the divine spirit of the woodlands – was once the guest. This is not the only corruption of the natural order that the Owl has observed: the tattling Jackdaw is espied taking the place of the King on a bed of straw, and the Parrot has usurped the place of more worthy birds within the court, while the brave sea birds have fled from England's coast and the valiant Cock has been banished to live with swains in the country. Wherever the Owle goes, in fact, she sees "proude Babells built / With cloude-braving turrets daubd'-o're with guilt (sig. F3v)." It is these abuses that have caused the Owl to give voice to her distress and produce the vocal disturbances with which she is charged.

Goddard here makes allusion to both sexual immorality in the replacement of virtue with vice in Silvanus's house, and the perceived loss of *virtu* and military capability that is suggested by the banishment of the Cock and the desertion of the sea birds from the English coast. The allusion to the tattling Jackdaw is strongly suggestive of the close relationship with the King enjoyed by James's favourites. In terms of the charge of homicide brought against her, the Owle counters the accusation

³⁸ William Goddard, "A MORRALL SATIRE, Intituled the Owles araynement," in *A Satirycall dialogue or a sharplye-invective conference, betweene Allexander the great, truelye woman-hater Diogynes*, (London: 1616) STC (2nd ed.) 11930, 99841467 <<http://eebo.chadwyck.com>> [accessed 23rd December 2010] (sig F2r – F4r) British Library. All references are to this edition and page references cited parenthetically in the text.

by pointing out that she is simply following the actions of the King's Hawks (the nobles), who "dailie doe deuoure eate-up and spill" the King's honest subjects (sig F3r). In view of this, the Owle insists that whatever punishment she is to suffer should also be applied to the Hawks: "What waie I goe, that waie your hauks must goe / Else gracious prince your lawe gives waye and place / to such as are, or are not in your grace (sig.F3r)." The Owle's comments represent a timely reminder to the King that the law should not be usurped by the royal prerogative.³⁹

The relationship between King and common law is further developed as Goddard's story unfolds. Summoned in turn to answer the charges in the court, the "guiltie nobles" admit to murder but insist that they too are following another's example – that of the King's himself:

Oh King quoth they
I hope unto our murthers youl give waie
Yf we make spoile and other birds undoe
We take the example souldaign Prince from you
We nerest Princes Imitate them still
We be the emblems of your good or Ill
.
And therefore king yf you'l have subiects awe
You must not onelie make but keep your lawe (sig.F4r).

Incensed by the Hawks' answer, the King starts a war with the nobility that results in a breakdown of governance and descent into chaos. In terms of natural law this chaos represents an inevitable extension of the displacement in the natural order that the honest Owle has already described. The reminder to the King of his duty to uphold the law almost certainly relates to the King's involvement in the Thomas Overbury affair of 1613, when James's long standing favourite, the Earl of Somerset, and his

³⁹ See David Norbrook, *Poetry and Politics in the English Renaissance*, rev.edn (Oxford: Oxford University Press, 2002), p. 196.

wife, Frances Howard, were accused of Overbury's murder. It is thought that Goddard, who in 1616 dedicated his satire *A Mastif Whelp* to his circle of friends at the Inner Temple, was much affected by Overbury's death, while Drayton's republication of *The Owle* in 1619 is thought to have included amendments, including the removal of a sonnet dedicated to James, that perhaps points to a similar concern about this most sinister of court affairs.⁴⁰

In the case of the earlier poems in this series, the concentration on court settings and the perceived displacement of natural order was to be oddly prophetic. The first issue of unification was not, contrary to expectations, settled by Parliament, but in the law courts. *Calvin's case* in 1608, which was that of a claim to inherit lands in England, brought on behalf of a child born after the Jacobean accession, forced the decision as to the legal status of alien Scots into the courts and, for some anti-Unionists at least, into the questionable machinations of legal argument at common law.⁴¹ Some of the potential reasons for the unpopularity of unification are investigated below.

The Uneasy Peace 1604-1607

The belief on which hereditary monarchy depended was that the aptitude and thus the entitlement to rule were innate in those nobles who had customarily undertaken this role. Arguments that we now associate with a republican turn of mind, however, fostered the concept that the preservation of a virtuous society necessitated the

⁴⁰ Norbrook, *Poetry and Politics in the English Renaissance*, p.196. Hudson, "John Hepworth's Spenserian Satire upon Buckingham," p.59.

⁴¹ For an insightful discussion on this topic see Keechang Kim, "Calvin's Case (1608) and the law of Alien status," *The Journal of Legal History*, 17.2 (1996), 155-171, in *informaworld*, <doi 10.1080/01440369608531154> [accessed 23rd December 2010].

repeated trying of virtue, often through conflict.⁴² In this way of thinking, the lack of virtue perceived in the person of the monarch and those within his court was not simply a danger to the propriety of sexual and social mores, but was also indicative of a more widespread malaise that posed a threat to the ideology of rule itself. James's ability and thus his right to rule could be questioned when viewed from an ideological standpoint that characterised 'virtue' as an encompassing ideal. It is not hard to see from this perspective how the social, and supposed sexual immorality of the king and his court could be linked to the concept of 'dishonourable' peace. From the perspective of James's opponents, the King's pacifism, his supposed sexual proclivities, and his arguably biased administration of the constitution could be viewed as a sickness in the kingdom that posed a threat to the natural order itself.

Appraisals of the allegedly discreditable state of affairs within the royal Court were not confined to fiction. Historian Anthony Weldon produced a retrospective of early Stuart rule that construes James's peace negotiations in light of his psychological and political inadequacies. James, Weldon maintains:

naturally loved not the sight of a soldier, nor of any valiant man...His sending ambassadors were no less chargeable than dishonourable and unprofitable to him and his whole kingdom; for he was ever abused in all negotiations yet he had rather spend 100,000 li. on embassies, to keep or procure peace with dishonour, then 10,000 li. on an army that would have forced peace with honour.⁴³

Rooted perhaps in the Machiavellian concept of man's unending and restless drive for power, the open criticism to James's policies together with the trenchant cynicism of

⁴² Andrew Hadfield, "Spenser, Drayton, and the Question of Britain," in *Review of English Studies*, New Series, 51.204. (2000) 582-599 in *JStore* <<http://www.jstor.org/stable/519256>> [accessed 23rd December 2010] (p.590).

⁴³ Sir Anthony Weldon, *The court and character of King James*. Written and taken by Sir A:W., being an eye and eare witness. Published by authority (London: 1650), Wing (2nd ed.) / W1273A , 52529086 <<http://eebo.chadwyck.com>,> [accessed 20th December 2010] (pp. 182-185) Birmingham Central Reference Library. See also Holbrook, "Jacobean Masques and the Jacobean peace," p.71.

Jacobean political satire demonstrates the doubts harboured by many in relation to the true status of James's pacifism. Such doubts are reflective of a factional cultural scepticism toward the politics of compromise and reconciliation – a scepticism that is appositely demonstrated in the work of the life long friend and fellow poet of Sir Philip Sidney, Fulke Greville: "Peace is quiet nurse/ of Idleness and Idleness the field / where wit and power change all seeds to worse."⁴⁴ As we have seen, peace in itself could be conceived not as a pragmatic ideal to be striven for, but as a perilous form of passivity linked to a composite immorality.

The need for concord, however, was pressing. Open xenophobia was a feature of early modern English culture and the succession of a Scottish monarch to the English throne represented a potential threat to political and social stability. Sustained border wars between the lowland Scots and the English had continued for centuries and were a testament to the ingrained hostility between the two nations. England's traditional failure to fully subdue the quarrelsome Scottish lords and their allegedly rabble-like followers, who were perceived as the inhabitants of an inferior, ill governed, and backward nation had done nothing to quell the dislike of the English populace for their northern neighbours in spite of the religious affiliations between the two countries.⁴⁵ The overt pacifism of James, often examined in light either of his personal fears or his humanist philosophy, or alternatively as part of his desire to order events on the European political stage, was in fact a strategy of practical and immediate necessity.

Citing the many indictments that were brought against English yeoman for seditious statements against the King during the summer of 1603, Jenny Wormald notes the bitter antagonism felt by ordinary men and women towards the Scots:

⁴⁴ Marx, "Shakespeare's Pacifism," p.52, citing Fulke Greville, *Caelica*.

⁴⁵ Jenny Wormald, "Gunpowder Treason and Scots," *The Journal of British Studies* 24.2 (1985), 141-168, in *JStore* <<http://www.jstor.org/stable/175701>> [accessed 23rd December 2010]

Hatred of the Scots ran through every stratum of English society – merchants, lawyers, academics. What had hitherto been indifference tinged with contempt now became open and bitter resentment. The presence of the appalling spectacle of “Scotsmen on the make” was a running sore.⁴⁶

In terms of the legal profession, the implication of several members of the Inner Temple in the Gunpowder Plot of 1605 seems to bear out this analysis.⁴⁷ Even before James’s coronation had taken place, those who sought to press an alternative claim to the throne – that of James’s cousin, Lady Arabella Stuart – had hatched an assassination plot at Winchester. Factions of the English aristocracy were heavily implicated and those accused included Sir Walter Raleigh, who was a member of the Middle Temple, the Lords Grey and Cobham, and Sir Griffin Markham amongst several others, two of whom were said to be Catholic priests. It is unlikely that the discontent of such individuals can be solely attributed to their disaffection as Catholics, in spite of the widely publicised opinion that the nobles had been ‘seduced’ by ‘Romish’ priests. Sir Griffin Markham was a Catholic as were the priests, Watson, and Clark, but Raleigh, Grey, and Cobham were Protestants.⁴⁸ Raleigh and Cobham had been excluded from office during the political organisation that took place at York as James made his journey south from Edinburgh, probably at the behest of Cecil and Northampton. Losing their positions to Scots, Raleigh and Cobham’s opposition to the appointment of James’s countrymen to the prime positions in the Chamber had ensured their own exclusion.⁴⁹

⁴⁶ Wormald, “Gunpowder, Treason, and Scots,” p.160.

⁴⁷ Prest, *The Inns of Court*, p.182.

⁴⁸ Wilson, *The history of Great Britain*, p.4.

⁴⁹ Neil Cuddy, “Anglo-Scottish Union and the Court of James 1, 1603-1625,” *Transactions of the Royal Historical Society*, 5th Ser., 39 (1989), 107-124, in JStore <<http://www.jstor.org/stable/3678980>> (p.109).

The menaces James faced were those of a factionalised society with multiple personal and ideological grievances. Whilst James's accession may have struck hope in the hearts of militant Protestants, his accession drew hope from Catholics too and the Hampton Court conference in 1604, which was an attempt to resolve religious anxieties, was largely unsuccessful. Ever the consummate politician, James sought to balance the demands of diversely exercised groups with equable tactical policies, but his ecumenical approach to religion and his peace initiatives were not what many had hoped for. A most pressing need of the king was to establish amity between the ruling elite of his dual kingdoms, and, accordingly, James made virtues of passivity and conciliation with a rhetoric that extolled unification.

The integration of Scotland and England was central to Jacobean domestic policy. In spite of the rhetoric of union, however, the unpopular proposal that England and Scotland should be merged to form one nation was further undermined by a foreign policy that sought reconciliation with Catholic Spain. This disincentive was further compounded, as we have seen, by censure of the perceived corruption and decadence at James's court, which several of the satirists suggested as pervasive.⁵⁰ A particular mark of the court's effeminacy and decadence was the extravagant masque culture patronised by the Queen, and Anne's "night walking and balling" provided, for some, a tangible symbol of the court's debauchery and lack of militancy.⁵¹ Describing the events at the court entertainment for Christian IV in 1606, a letter written by Sir John Harington forthrightly states his abhorrence of the general low conduct at court, a sentiment that others shared:

I have much marvelled at these strange pageantries, and they do bring to my

⁵⁰ Holbrook, "Jacobean masques and the Jacobean peace," p.71.

⁵¹ Holbrook, "Jacobean masques and the Jacobean peace," p.72, citing David Harris Willson, *King James VI and I* (London: Cape, 1956), p.95.

remembrance what passed of this sort in our Queens days; of which I was some-time an humble presenter and assistant; but I neer did see such lack of good Order, discretion, and sobriety, as I have now done...the gunpowder fright is Got out of all our heads, and we are going on, hereabouts, as if the devil was con-triving every man shoud blow up himself, by wild riot, excess,

and devastation of time and temperance.⁵²

The production of masques and entertainments were, however, to be prominent in the propaganda for peace and the bids to inscribe in law the unification of James's two kingdoms. As deeply politicised visual displays, the masques provided a way, in Ben Jonson's words, to "lay hold on more removed mysteries," which illustrated the political and philosophical avowals of their authors and patrons.⁵³ Masques thus can be seen as ideological assertions that were enmeshed in the deeply factional politics of the Jacobean court. In this sense they are representative of the differing political attitudes that co-existed under the fallacious unity of purpose that it was necessary to maintain in relation the policies of the monarch - policies of which legal unification in all its forms was the most contentious.

The Issues of Union and the Parliament of 1606-7

The problem for James's was how to unite one kingdom perceived as a vassal state of inferior culture with that of another of superior military strength, resources, and supposed cultural superiority, whose imperialistic vision favoured the subjugation of vassal nations through conflict rather than amity. James's response was the proposal to unite Scotland and England as 'Great Britain,' which would not only join England with his native land, but also dissolve the demarcations of class and culture that had

⁵² David Lindley, "Campion's "Lord Hay's Masque," p.6. Lindley cites Sir John Harington, *Letter and Epigrams*, ed. N.E McClure, Philadelphia, University of Philadelphia Press, 1930) p.120

⁵³ Bevington and Holbrook, introduction to *The Politics of the Stuart Court Masque*, p.1, citing Ben Jonson, *Hymenaei*, lines 16-17.

traditionally separated the English national identity from that of its allegedly disordered and alien northern neighbour. As James was himself an Anglo-Scot he desired that his subjects too should be of joint nationality as inhabitants of Great Britain – a desire not universally shared by members of Parliament, and one that was to be thwarted for many decades. Successful absorption of the Scots aristocracy into the ruling elite was achieved by diverse other means, however, and was part of a wide policy of assimilation that took place in the political arena during Jacobean rule.

An air of radical transformation permeated James's court in 1603. The conferring of honours on an unprecedented level saw a general scramble for advancement, and the political acumen with which James dispensed his favours helped balance the hopes and aspirations of disparate groups. Those that had enjoyed patronage in the old order were seeking to find favour in the new, and the self-interest and insecurity of those working to retain or increase their positions worked to contain overt demonstrations of antagonism towards James's Scottish lords. One contemporary historian describes the fervour that permeated Whitehall on James's arrival: "Now every man that had but a *Spark of Hope*, stuck fire / to light himself in the way to Advancement... The *Court* being / a kind of *Lottery*, where men that venture much may draw a / Blank, and such as have little may get the Prize."⁵⁴ The release from the Tower and honourable reinstatement of the Earls of Southampton and Essex; the promotion of the Catholic Lords Thomas and Henry Howard to positions of power and prestige; the "smooth way" negotiated between the Bishops and the Non-Conformists, and the adulteration of the nobility with a new generation of members whetted an appetite for honours amongst ambitious men eager for advancement.⁵⁵

⁵⁴ Wilson, *The history of Great Britain*, p.3.

⁵⁵ Wilson, *The history of Great Britain*, p.3.

A pithy observation on the way in which loyalty to the King was achieved summarises the aspirations of those in the newly formed court: “Those he brought with him wanted / means more than Honour, those he found here wanted Honour / more than Means; He could, and did supply both to excess.”⁵⁶ The fact that James surrounded himself with Scots did not pass without note or rancour, but the King’s shrewd balancing of the factional interests within the court helped suppress at least the outward shows of subversion, while those who favoured a more vigorous foreign policy murmured against the pacifist policies of the Crown, and others like Richard Niccols and Michael Drayton poeticised their disgust at the avarice and the perceived general debauchery of the court.

As part of the key political objective of naturalisation the Anglo-Scottish Union Commission proposed in 1604 that all of James’s subjects, those both *ante-nati* and *post-nati* to James accession, should lose specifically English or Scottish citizenship and become citizens of his joint kingdom. This objective was to become an essential concern during the rest of James’s reign.⁵⁷ As Kevin Curran demonstrates in a recent study of the politics of Anglo-Scottish union, the naturalization that the Commission proposed had deep political ramifications other than the simple classification of James’s subjects as ‘English,’ ‘Scottish,’ or ‘British,’ the most contentious of which related to the concept of the monarch’s two bodies – the body natural and the body politic – which were traditionally signified as indivisible and co-dependant within the persona of the monarch.⁵⁸

⁵⁶ Wilson, *The history of Great Britain*, p.6.

⁵⁷ Neil Cuddy, “Anglo-Scottish Union and the Court of James I, 1603-1625,” p.108; Kevin Curran, “Erotic Policy: King James, Thomas Campion, and the Rhetoric of Anglo-Scottish Marriage,” *Journal for Early Modern Cultural Studies* 7.1 (2007) 55-77, in *Project Muse* <http://muse.jhu.edu.exproxy.sussex.ac.uk/journals/journal_for_early_modern_cultural_studies_>. [accessed 23rd December 2010] (p.4).

⁵⁸ Curran, “Erotic Policy,” p.4.

In terms of the theory of the monarch's two bodies, the justification for the absolute power of the monarch rested on a providential jurisprudence that theorised the King's body as 'divine.' Whilst the divinity of the King's body continued to be celebrated, the theory that this transcendence invested absolute power in the monarch was challenged, as Paul Raffield has shown, by concepts of the power of a sovereign common law that drew its authority from an ancient constitution - a constitution in which the tenets of divine and natural law were inscribed.⁵⁹ This philosophy of rule and law conceived monarchic power as constrained within lawful and natural limits, and although no statutory restraint limited the powers exercised under the royal prerogative, the ideology of constitutional rule characterised such prerogative as operating within a legal setting, a setting in which the judiciary had the power to question the legitimacy of specific acts taken in the name of the monarch.⁶⁰ As we have seen, this concept was imaginatively demonstrated in the verse satires of Niccols, and Goddard, in which the legitimacy of the monarch's actions are questioned in relation to natural law.

Questions of the legitimacy of royal actions were, of course, not new, and several Elizabethan plays dramatise the perceived danger posed by absolute rule unmitigated by legal authority, notably Sackville and Norton's *Ferrex and Porrex*, which was performed before the Queen in 1561-2. The difficulties in negotiating the personal and political issues inherent in a concept of the monarch's natural body as indivisible from the mystic royal body politic is illustrated, as we may remember, in the courtship masque accompanying *Ferrex and Porrex*, that of *Desire and Lady Bewty* in which care is taken to distinguish between the persona of Elizabeth as the goddess Pallas,

⁵⁹ Raffield, *Images and Cultures of Law*, pp.126-127.

⁶⁰ Raffield, *Images and Cultures of Law*, pp.126-127.

and her identity as Lady Bewty.⁶¹ A distinction between Elizabeth's natural body (as woman) and the body politic did not, however, alter the incontestable fact that allegiance was required to be given to both in equal measure. The concept of the indivisibility of the monarch's two bodies became more problematic in relation to the hybrid identity of the Scottish King, as Kevin Curran explains.⁶² James's claim to divine right found ready signification in the providential theory of the King's two bodies, a theory that raised difficulties in terms of the allegiance owed to him by his English subjects.

James sought to legalise Union by insisting that the union of Anglo-Scots blood given by God in his own body natural needed to be replicated within the legal construction of the body politic. This would ensure that James's Scottish lords assumed British citizenship. Members of the Parliament of 1606-07 successfully argued against this concept. As we have seen, the issue was brought into the remit of the courts of justice in *Calvin's case* in 1608. This case, which was one of the most heavily argued in living memory, did establish that those *post-nati* to James's accession to the English throne would be naturalised as British. Parliament's lack of support for the scheme, however, meant that this ruling, although an important milestone, only partially resolved the issue. As only the infants born after 1603 would count as legal citizens of a 'Great Britain,' this measure still left the bodies politic of England and Scotland divided, and likewise, so were the individual allegiances owed to the crown by adult Scots and English (wo)men.⁶³ In effect, the Scots' duty was to James as King of Scotland, while the English were only subject to James as the King of England.⁶⁴

⁶¹ Chapter 1, pp.121-130.

⁶² Curran, "Erotic Policy," pp.58-59.

⁶³ Curran, "Erotic Policy," pp.3-5.

⁶⁴ Kim, "Calvin's Case (1608) and the law of Alien status," p. 156; Curran, "Erotic Policy," p.5.

Parliament in 1607 did not represent a consensus, or indeed did they at that time represent a body that could be characterised as an organised opposition in any modern sense, but powerful individual members proved successful in ensuring that James was frustrated in his attempts to unite his two kingdoms.⁶⁵ The Earl of Southampton, who had not profited well from the accession settlement, together with Southampton's brother-in-law Lord Arundel, and Sir Edwin Sandys, who was responsible for stirring opposition to naturalisation in the Commons, were highly successful in blocking James's proposals. Reports of Sir Christopher Piggott's bitter speech against the Scots courtiers in relation to unification, a startling attack that forced the Commons to order his incarceration in the Tower, demonstrate the depth of feeling that the proposal for union provoked.⁶⁶ Curran gives an adroit summary of the political implications ensuing from Parliament's contentious refusal to concede to James's request:

The lawyers in the House broke the theoretical continuity between the king's natural and political bodies, giving allegiance to the body politic priority over allegiance to the body natural... For English anti-Unionists it meant that adherence was owed to the Crown of England as a concept and, even more importantly, to the laws of England as an institution, before it was owed to the physical body natural of James in particular.⁶⁷

In view of the raised importance attached to the symbolic status of the body in the unification debate, it is not surprising that this status featured prominently in the masques and entertainments staged for the Stuart court, and as a symbol of the policy of integration between Scotland and England, the bodily union produced by Anglo-Scottish marriage became highly politically significant.

⁶⁵ Conrad Russell, "Parliamentary History in Perspective, 1604-1629," *History*, 61.201, (1976) 1-27 in *Wiley Online Library* <DOI: 10.1111/j.1468-229X.1976.tb02051.x> (p.3). Russell discusses the relative weakness of Parliament during the Jacobean reign and notes that Parliament's principal procedural means of redressing grievances and meeting demands was through tactical persuasion.

⁶⁶ Neil Cuddy, "Anglo-Scottish Union and the Court of James 1, 1603-1625," pp.113-15.

⁶⁷ Curran, "Erotic Policy," p.5.

The cultural implications of Anglo-Scottish marriages were well understood as is demonstrated by the question posed by poet Thomas Campion, who enquires: “Who can wonder then, that he that marries kingdoms, marries men?” as he neatly acknowledges the pragmatic and political, rather than the romantic project that such alliances represented.⁶⁸ Indeed, Robert Wilkinson’s sermon *The Merchant Royal*, which formed part of the nuptial celebrations for the marriage of nobles James Hay and Honora Denny in 1607, emphasises the political nature of dynastic marriage in an address to the King that illustrates the significance of Denny and Hay’s sexual union in relation to the aggrandising concept of national unity:

for your
M. is to us indeede a royall Merchant, not only for the
Union of holy marriage, which yokes & couples one sex
With another, but as Merchants doe by intercourse of
Traffique, for knitting & combining one kingdome with
Another.⁶⁹

Whilst hopefully the means to produce a future populace made up of legally British subjects, the union of the bodies of Scots and English men and women represented a form of political exchange, and also served as a metaphor for the peaceful and loving congress sought between the national bodies of Scotland and England.

Although inter-racial marriage had been a common, but illegal practice in the warring borderlands, Anglo-Scottish marriage was infrequent in England until 1603.⁷⁰

In view of James’s failure to legalise naturalisation during the 1607-7 Parliament, the

⁶⁸ Thomas Campion, “To the most puissant and Gracious James King of great Britaine,” in “The Discription of A Maske,” *The Works of Thomas Campion; Complete Songs, Masques, and Treatises with a Selection of the Latin Verse*, ed. Walter R. Davis (New York: Doubleday, 1967) pp. p.207-228 (p.207).

⁶⁹ Robert Wilkinson, *The merchant royall A sermon preached at White-hall before the Kings M. at the nuptialls of the Right Honourable the Lord Hay and his Lady, vpon the twelfe day last being Ianuar .6. 1607* (Edinburgh: Finlason, 1607), STC (2nd ed.) / 25659, 99848501, < <http://eebo.chadwyck.com>. > [accessed 14th December 2010] British Library (sig D3).

⁷⁰ Brian P. Levack, *The Formation of the British State: England, Scotland, and the Union 1603-1707* (Oxford: Oxford University Press, 1987), pp. 186-187, quoted in Curran, “Erotic Policy,” p.56.

cultural importance of such marriages should not be underrated, as Lori Anne Ferrell explains: “What might be seen as the least politically substantial of the king’s personal initiatives had the potential to wield the strongest cultural impress: James worked to unite his dual kingdoms one couple at a time.”⁷¹ The practice attracted considerable criticism, however, and both the poetic celebrations of Anglo-Scottish marriage, and the masques commissioned for the lavish weddings of Scotsmen to English noble women resonate with the political tensions surrounding the issue of union.

Anglo-Scottish marriage 1607-1613

They begg our Landes, Liveinges, and Lives
They switch our Nobillitie & lye with our Wives.⁷²

Two of the most celebrated and controversial of the Anglo-Scottish marriages that took place in the first decades of James’s reign were that of James Hay and Honora Denny in 1607, and the marriage of James Carr, Viscount Rochester, to Frances Howard, in 1613. Both of these high-profile alliances were later to become the subject of scandal and gossip. It was generally supposed that Honora Denny was alluded to and much maligned in Lady Mary Wroth’s *Urania*, a supposition that produced a bitter and long standing literary quarrel between the author and Lord Denny, Honora’s father. A more serious state of affairs ensued in 1613 after Robert Carr’s marriage to the daughter of the Earl of Suffolk, Frances Howard, who was the former wife of the

⁷¹ Lori Anne Ferrell, “The Sacred, the Profane, and the Union: Politics of Sermon and Masque at the Court Wedding of Lord and Lady Hay,” in *Politics, Religion, and Popularity in Early Stuart Britain: Essays in Honour of Conrad Russell*, ed. Thomas Cogswell et al (Cambridge: Cambridge University Press, 2002) p. 49, quoted in Curran, “Erotic Policy,” p.56.

⁷² Lindley, “Lord Hay’s Masque,” p.5, citing “In Scotus,” Bodlein MS Malone 23, fol.4v.

third Earl of Essex, and was to be later charged, together with Carr, for the murder of Sir Thomas Overbury.

The first of these influential marriages, that of the English heiress Honora Denny and the King's favourite James Hay, took place on Twelfth Night 1607. Thomas Campion, a member of Grays Inn, who by 1605 was being compared to the most celebrated poets and dramatists of his day including Daniel, Drayton, Chapman and Marston, was commissioned to write a masque fitting for this most prestigious of occasions.⁷³ It seems that the substantial financial burden of Campion's production was borne by the family of Thomas Howard, Earl of Suffolk, and that of Thomas Cecil, who was Honora Denny's grandfather. The patronage both of the Howards and Cecil's can be construed in light of their joint political efforts to consolidate favour with the king, whose own commitment to the project included the honouring of both Sir Edward Denny, Honora's father, and James Hay with baronetcies. These measures, together with the bequest of Strixton Manor and other lands to the young couple, appear to have overcome Denny's evident reluctance to allow the marriage of his sixteen-year old daughter to a Scot.⁷⁴

Campion's dedicatory verse to King James, which appears in the 1607 text of *The Lord Hay's Masque*, evokes the literal mixing of blood that is thought to ensue as a result of Anglo-Scottish marriage.⁷⁵ Recounting an ancient legendary peace pact, the proem gives an account of the sacramental pagan rite of the Scythians, whose concord was solemnised by the letting and mingling of blood, which was then ceremoniously imbibed by each Scythian in turn. This literal fusion and consumption of blood not only united the Scythians in an enduring peace, but also led their enemies to perceive

⁷³ Vivian, introduction to *Campion's Works*, p. xxxviii.

⁷⁴ David Lindley, "Who Paid for Campion's 'Lord Hay's Masque'?" *Notes and Queries* 26.2 (1979) 144-145, in Oxford Journals < doi:10.1093/nq/26.2.144 > [accessed 23rd December 2010]; Curran, "Erotic policy," p.6.

⁷⁵ See page 168, n.

them as indestructible. This auspicious unification of the Scythians is an allegory of the propitious political alliance that is about to take place through the mixing of the divided blood of England and Scotland.

A mythological scheme was employed for the construction of the masque, which has a precedent in Baif's *Mascarade de M.le Duc de Longueville* (1595), in which a comparable plot structure illustrates the theme of union between France and Spain.⁷⁶ An organising principal within the work is the settling of differences, or the reconciliation of opposites to provide a unitary whole - a unification that is celebrated as a reflection of the harmony in the cosmic order. The strand of neoplatonic theology to which this concept of reconciliation relates signifies diverse and opposing deities as syncretic, in that they are all elements of the divine "One." This interdependence and reconciliation of conflicting elements, or polarised opposites, is illuminated in the theory of *coincidenta oppositorum* - the concept that discord and concord can exist together as one entity, an entity that embraces all human diversity as part of the *una dea*, the unitary whole. Incorporating Orphic and Hermetic ideals, this theory was familiar to early modern scholars from a variety of sources, in particular Ficino's *Corpus Hermeticus*, published in 1471. The theory is also featured in Nicholas of Cusa's influential *De Docta Ignorantia*, a work that helped shape the ideas of Paracelsus, Agrippa of Nettesheim, Scaliger, and Giordano Bruno, amongst others, while it also represents a dominant theme in the Kabbalah, in which the term *achdut hashvaah* is used to denote the *Ein-sof* – the "Infinite God" as the unification of the contrary aspects of the cosmos.⁷⁷

⁷⁶ Enid Welsford, *The Court Masque: A Study in the Relationship Between Poetry and The Revels* (New York: Russell & Russell, 1962), pp.181-182.

⁷⁷ Ivor Leclerc, *The Nature of Physical Existence*, Muirhead Library of Philosophy Series (London: Allen and Unwin, 1972), pp. 130-3. Leclerc maintains the importance of Nicholas of Cusa's work in relation to neoplatonic theory; Sanford L. Drob, "The Doctrine of *Coincidenta Oppositorum* in Jewish Mysticism," (2000) < www.NewKabbalah.com > (p.2)

In terms of the unification of persons, the concept of *coincidenta oppositorum* is repeated in Pierre de la Primaudaye's explanation of the way in which the contrary and opposing natures of the feminine and the masculine become harmoniously reconciled in marital union.⁷⁸ Primaudaye explains that the "cleane contraries" of fire and water signify the contrary qualities of male and female, who retain the hot, dry, (male) quality of fire, or the cold, moist (female) quality of water. When these contradictory elements are combined in marriage, however, they make a "harmonie and temperature of love."⁷⁹ Within *The Lord Hay's Masque* these concepts of unity - personal, political, and cosmic - are relayed through classical references which both reinforce the traditional nuptial celebration of union between male and female, while also appealing to the wider political project of unification to which the marriage contributes.

Campion's masque commences in a prelapsarian location of cosmic creation that is signified by a sexualised pastoral landscape belonging to Flora and Zephyrus. In Ovid's version of this creation myth, the earth nymph Chloris is pursued and seduced by Zephyrus, the spring wind, thus transforming Chloris into Flora whose breath scatters flowers across the cold earth.⁸⁰ The ensuing action is shaped by the Neoplatonic dialectic of love, in which beauty is produced from the *discordia concors* of love and chastity.⁸¹ As the celebrations for the nuptials take place, the conflict of opposites is heralded by the figure of Night, who disrupts the festivities of Flora and Zephyrus with an admonition that the celebrations are an insult to the chaste Diana, whose virginal nymph has been stolen by Venus to be given in marriage. This is not the sole reason for the goddess's displeasure, however. Diana's anger has been further

⁷⁸ Lindley, "Campion's Lord Hay's Masque and Anglo-Scottish Union," p.2.n.

⁷⁹ Lindley, "Campion's Lord Hay's Masque," p.2, n. Lindley quotes Primaudaye's *The French Academie*, trans. by Thomas Bowes (1586) p.499.

⁸⁰ Wind, *Pagan Mysteries in the Renaissance*, pp. 113-115, citing Ovid, *Fasti* V. pp.193-214.

⁸¹ See Wind, *Pagan Mysteries*, p.117.

roused because of the sacrilege practiced by the Knights of Apollo, who entered her domain and attempted the seduction of her virtuous nymphs in the sacred forest. In retribution for this profanation, Diana has lately transformed Apollo's knights into trees. Resolution to this conflict is provided by the arrival of Hesperus/Venus with a message that Phoebus has appeased the angry goddess, who is now content for her nymph to be made a bride and also for the Knights of Apollo to be freed from their inanimate forms and returned to their former shapes.

The spatial organisation of the playing space for the masque develops the themes of opposition within the plot structure. A tree at one end of the hall to signify Diana's forest is situated in a position diametrically opposite to the royal throne at the other, where James presides over the masque and assumes his symbolic identity as Apollo. In the same manner, the bower of Flora, which is "garnisht with all kind of flowers, and flowrie branches with lights in them," is set across the hall from the house of Night, which is decorated with stars of gold and artificial owls and bats set on wires so that they continually move.⁸² Campion's celestial figures carry multiple signification that work to express the masque's themes on several levels.

The plot structure develops a tripartite balance of the conflicts between the gods/elements/planets. An elemental opposition is played out between the cool damp moon goddess, Diana, and the god Apollo, who signifies the hot dryness of the sun. Venus, who appears as Hesperus, the evening star, is warm and moist and thus tempers the incompatibility of hot dry sun and the cold moon, while Apollo in turn mediates between the opposites of Venus (love, passion) and Diana (virginity).⁸³ The arrival of Hesperus with Diana's message works to appease the complaining Night

⁸² Campion, "The Discription of a Maske," *The Works of Thomas Campion*, ed., Walter R. Davis, p.212. Davis provides a diagram of the playing space, p. 206. See also Lindley, "Campion's Lord Hay's Masque," p.2.

⁸³ Lindley, "Campion's Lord Hay's Masque," p.2; Davis, preface to "The Discription of a Maske," in *The Works of Thomas Campion*, p.204.

and so settles her conflict with Flora and Zephyrus. Although the moon goddess has indicated her willingness to release the Knights of Apollo, however, they are as yet still trapped in their inanimate forms. Drawing on the occult theory of talismanic magic, Campion illustrates this further conflict as resolved through Diana's gift of a diadem, a magic gem, which Hesperus now has in his possession for the purpose of releasing the knights from their inanimate forms. The concept that the stone of one planet can temper the astrological power of another signifies that the lunar qualities of Diana's gem stone has the power to ameliorate the Apollonian qualities of the knights, and after this is achieved, all are released.⁸⁴ A reconciliation of conflicting elements thus results in the harmony of union, signified on a cosmic level as the unity of the *una dea*, and on a human level as the union of the bride and groom.

While Campion's work demonstrates the graceful characteristics of the traditional marriage masque, the symbolic status of the bodies of monarch, bride, and groom present difficulties that are a feature both of *The Lord Hay's Masque* and Wilkinson's opening sermon for the nuptials, *The Merchant Royall*. While the masque entertainment presents an elegant alternative signification to that of the heavy-handed mercantile imagery used by Wilkinson, in which an extended metaphor of the bride as a merchants' ship threatens to characterise the proceedings as a form of barter, both authors struggle with the project of idealising the controversial concept of union. Wilkinson's difficulties are most apparent when he attempts to contain his bridal metaphor by illustrating its exclusions. The bride should not carry too much rigging lest "with a feather in her cap like a flag in her top, to tell ... which way the winde will blow," she resembles a "ship of vanities." Crucially, whilst a merchant ship may belong to many merchants "neither may one woman divide her love to many men" –

⁸⁴ Lindley, "Campion's 'Lord Hay's Masque,'" pp. 1-3, 7, n. Lindley locates this theory of magic in Cornelius Agrippa's *De Occulta Philosophia* (Basle, 1533), I, p. 98 n.

an admonition that invites the kind of crude wit demonstrated in the libel “ffrom Katherine’s docke was lanced a pincke,” in which another bride, Frances Howard, is compared to a “leaky” ship of sexual incontinence.⁸⁵ As we have seen, discomforting imagery in Wilkinson’s sermon characterises James as the ‘royal merchant’ who will unite the kingdoms of England and Scotland. In spite of its reference to a biblical passage, the elevation of the common merchant to princely status works to dispel the spiritual aspect of the couple’s union and instead invites the listener to dwell uncomfortably on James’s political and mercantile motives for supporting the alliance.

In what is generally acknowledged as a time of increasing nostalgia for Elizabethan rule, Campion’s masque is identified by several critics as particularly reflective of the unfavourable comparisons made between the political and moral *modus operandi* of the new court and that of the late Queen. Customarily adopted as an image of the virginal Elizabeth, the chaste figure of Cynthia/Diana can be read either as an entity whose authority bows to that of the more powerful Phoebus/Apollo, or alternatively, as the overriding force behind the ordering of events within the masque.⁸⁶ This appropriation of the figure of the late Queen signals the political element within the narrative. A symbolic emasculation of Apollo’s (James’s) Knights, who are kept at Diana’s pleasure as trees and thus in a death-like state of inertia, can only be remedied at the dictate of the goddess herself, and thus the power play between masque’s god-like characters is seen to imply a political scenario in relation to James’s kingly authority. The figure of Elizabeth/Cynthia within the masque can

⁸⁵ Wilkinson, “The Merchant Royall,” sig. C-C2, quoted in Joshua Eckhardt, “Love-song weeds, and Satyrique thornes”: Anti-Courtly Love Poetry and Somerset Libels,” *Huntington Library Quarterly*, 69.1 (2006), pp. 47- 66, in *JStore*, <<http://www.jstor.org/stable/3818016>> [accessed 23rd December 2010] (p.62).

⁸⁶ For these alternative views on the Elizabeth/Diana’s status within the masque see Lindley, Campion’s “Lord Hay’s Masque,” and Curran, “Erotic Policy.”

either be seen as co-opting with the political project of union, a reading that was the obvious one for the Scots within the audience, or alternatively, as providing a warning that the success of the current project, and also the broad objective of Scots/English naturalisation would only be successful if James and his dissolute courtiers respected the Elizabethan value systems of the English elite.⁸⁷

Campion's classical references go some way toward containing these politicised readings. In terms of the mythological structure, the upset within the masque world relates to a natural order of events as the time arrives for the maiden to relinquish her virginity in marriage:

Virinitie is a voluntary powre,
Free from constraint, even like an untoucht flower
Meete to be gather'd when tis thoroughly blowne,
The Nymph was Cinthias while she was her owne,
But now another claimes in her a right,
by fate reserv'd thereto, and wise foresight.⁸⁸

Although the cult of the virginal Diana/Cynthia may at first appear to be at odds with the sexuality of Flora and Zephyrus, mythological doctrine denotes Diana as representing aspects of a composite femininity. The identities of the goddesses overlap so that they constitute one world – “*Est...una dea*” – but are also “*sunt multa...nomina*-many named.”⁸⁹ In his *Fountaine of Ancient Fiction*, in which he draws on the popular work of the mythographer Catari, Richard Linche explains the various names of Diana as depicting her heavenly identity as Luna, her earthly form, and her form “down even to the bowels of Erebus, where she is called Hecate and Prosperina, where it is supposed she shee remaineth during the time of her lights

⁸⁷ For the latter view, see Lindley, “Campion’s “Lord Hay’s Masque.”

⁸⁸ Campion, “The Discription of a Maske;” Davis, *Works*, pp. 217-18.

⁸⁹ Stevie Davis, *The Idea of Woman in Renaissance Literature*, (Brighton: Harvester, 1986) p.11.

absence from the world's view and illustrement.”⁹⁰ In this way the several figures of the goddess become one: the chaste and virginal Diana shadows the figure of Ceres/Prosperina, and also that of the death figure of Hecate. Diana's identities are subsumed to symbolise the fertility cycle of the female as virgin, matron and elder, and just as the goddess embodies temporal aspects of human life she also signifies the female principal linked to the cyclical sphere of the moon and the life and death of the earth. This interpretation allows for the conflict within the masque world to be located within the body of the virgin bride herself at the moment when her womanly fate dictates that she relinquish the freedoms of maidenhood and become a wife. In terms of Neoplatonic doctrine, this can be seen to represent the *discordia concors* of love and chastity, “the harmony in discord” that develops into *Pulchritudo*, or an ultimate beauty, which is characterised as the culmination of human love.⁹¹

In the context of performance the masque could thus represent a conventional illustration of the mythological principals of love and marriage, albeit one in which the political project of co-opting the figure of the late Queen to serve the masque's propaganda of union were clear. I suggest that the textual reproduction of the masque and its dissemination may have proved potentially more problematic, however, particularly in terms of the proem that was printed in the authorised text and dedicated to the King. As we have seen, Campion uses the example of the blood ritual of the Scythians as an allegory of the supposedly propitious political union that is about to ensue between Scotland and England. The allegory is particularly appropriate when considered in relation to Raphael Holinshed's authoritative history of Britain in which

⁹⁰ Richard Linche, *The Fountain of Ancient Fiction*, (London: Adam Islip 1599), STC (2nd ed.) / 4691, 99843588 < <http://eebo.chadwyck.com>. > [accessed 14th December 2010] Henry E. Huntington Library and Art Gallery.

⁹¹ Wind, *Pagan Mysteries in the Renaissance*, pp. 73,78,88. Wind discusses the theory in relation to the work of Pico Della Mirandola, Ficino's pupil.

the Scots themselves are identified as the Scythians' direct descendants.⁹² A problem, however, with Campion's choice of reference is the associations that were traditionally attached to the Scythian race – associations that were precisely those with which James's opponents characterised the dissolute Jacobean court.

Those that typified James's Scottish entourage as illiterate, coarse, and dishonest need look no further than Holinshed's ancestral history in order to verify their prejudices. The *Chronicles* describe the Scottish descendants of the ancient race as "reputed for the most Scythian-like and barbarous nation, and longest without letters; so they used commonly to steale over into Britaine in leather skewes." Dismissed as inextricably intermingled with the unpopular Irish race, the Scots' particular barbarity is identified in the *Chronicles*, where it is claimed that the Scots "used to feed on the buttocks of boies and / women's paps, as delicate dishes," in a lurid suggestion of Scottish depravity that resonates with Campion's poetic description of the Scythian's blood-drinking peace rites.⁹³

Holinshed's provocative history of the Scots' association with the Scythians becomes more problematic when considered in relation to the other textual authorities available to early modern readers. The classical writings of Hippocrates, Aristotle, and Herodotus provided suggestions not only of the Scythian barbarism, but also of the overt effeminacy of the Scythian men. In his *Nicomachaen Ethics*, Aristotle describes an innate tendency to effeminacy in the Scythian royal family and its descendants, a tendency that is also acknowledged by Hyppocrates as the 'feminine sickness' of the wealthy and highborn Scythian males, while Herodotus identifies the

⁹²Raphael Holinshed, *The first and second volumes of Chronicles*, (London: 1587) STC (2nd ed.) / 13569.183967 < <http://eebo.chadwyck.com>. > [accessed 14th December 2010] Henry E. Huntington Library and Art Gallery.

⁹³ Holinshed, "The description of Britaine," *The First and second volumes of Chronicles*, pp.5-6. See also Alan MacColl, "The construction of England as a Protestant 'British' nation in the sixteenth century," *Renaissance Studies*, 18.4. (2004), 582-608 in *Wiley Online Library* <doi 10.1111/j.1477-4658.2004.00078.x> [accessed 23rd December 2010] (pp. 601-602).

disease of effeminacy suffered by the transsexual Scythian *Enareas* as the punishment inflicted on the Scythians following their desecration of the ancient temple of the goddess Venus Urania.⁹⁴ Campion's allusion to the Scythians thus invites the speculation that the perceived effeminacy and barbarism of the Scots can be traced to an early history, and a history that was backed by the highest classical authority. In view both of the rumoured homoerotic relations between James Hay and the King, and the accusations of coarseness that were levelled at the Scots courtiers and even at James himself, Campion's choice of reference for the proem appears to be in tension with the project of union that the text celebrates, and contrasts strongly with the Neoplatonising themes within the masque.

Tensions are also evident in works produced for the second of the high-profile Anglo-Scottish alliances, and are a particular feature of George Chapman's epithalamion, *Andromeda Liberata*. The poem was written in celebration of the most notorious of the Anglo-Scottish weddings in the early years of James's reign, that of Frances Howard, formerly Lady Essex, and Robert Carr, Viscount Rochester, who were married on 26th December 1613. Robert Carr had experienced a meteoritic rise to power as the undisputed favourite of the King. Both the political and moral implications of the marriage polarised opinion amongst the aristocratic elite, and continuous references to the affair are found in a range of texts written during the years between 1613 and 1615, when the trials for Thomas Overbury's murder, in which both parties were implicated, took place.

⁹⁴ Aristotle, *Nicomachean Ethics*, Book 7, 1150b in *Aristotle in 23 Volumes*, trans. by H. Rackham, 19 (London: Heinemann, 1934), *The Perseus Digital Library* < <http://www.perseus.tufts.edu/> > [accessed 23rd December 2010]; Barnabe Rich, "The first Booke," *The famous history of Herodotus Conteyning the discourse of diverse countreys* (London: Thomas Marshe 1584) STC (2nd ed.) / 13224. 99841822 < <http://eebo.chadwyck.com>. > [accessed 14th December 2010] (fol.34v). Henry E. Huntington Library and Art Gallery; Phinio Pioreschi, "Supernatural Elements in Hippocratic Medicine," *Journal of the History of Medicine and Allied Sciences*, 47.4 (1992) 389–404 (pp.401–402).

The divorce of the Catholic Frances Howard from the Earl of Essex, the Protestant heir of Elizabethan militant *virtu*, and her subsequent marriage to Carr, who was later to support the doomed match between Prince Charles and the Roman Catholic Infanta of Spain, not only scandalised pious Protestants but also fuelled religio-political fears of a heightened crypto-Catholic influence at court.⁹⁵ Annulled on the grounds of Essex's supposed impotence, the recent dissolution of the Howard / Essex marriage had also posed intractable problems in relation to the legality of the divorce and the truth of Howard's claims that the marriage had remained unconsummated. An opinion of the difficulties in relation to the annulment is contained in a letter written in April of 1613 by John Chamberlain to Sir Dudley Carelton, in which some of the facts of the case are discussed.⁹⁶

Although Chamberlain's letter reported the readiness of the earl of Essex "(whether true or feigned) to confesse insufficiencie in himself," or to acknowledge the grounds for the case, this was on the proviso that "yet he will be left at liberty to marrie any other," and the Earl's readiness to concede that he was "*maleficiatus*," but only in relation to Frances Howard, was suspect. Grave reservations regarding the divorce were also expressed by both the Lord Chamberlain and Howard's supporters in light of allegations that Howard had made "divers straunge questions and propositions" when in consultation with a "wise woman," who claimed that Howard had consulted her with the intention of murdering Essex. Intervention by the King helped settle the difficulties of the divorce when in May 1613 James appointed a special commission of lawyers, councillors and clergy that duly voted for the marriage to be annulled.

⁹⁵ Eckhardt, "Love-song weeds, and Satyrique thornes," p.66.

⁹⁶ See James L. Sanderson, "Poems on an Affair of State—The Marriage of Somerset and Lady Essex," *The Review of English Studies*, New Series, 17.65, (1996), 57-61, in JStore <http://www.jstor.org/stable/513473> [accessed 23rd December 2010] (p.58).

The affair produced a corpus of satire that dwelled on the dishonourable status of the divorce and the unlikelihood of Howard's chastity. This claim was buoyed by a popular rumour, which scandalously claimed that the physical examination undertaken by a group of matrons in order to establish Howard's virginity had in fact been carried out on a heavily veiled young maiden, not yet old enough to be sexually active, who had been used as a substitute for Frances. A well-quoted verse typifies the vicious attack on Howard's honour:

There was at Court a Ladye of late
That none could enter shee was soe straight
But now with use shee's growne so wide
Theare is a passage for a Carre to ride.⁹⁷

Howard, it was said, "could wreake within the Armes of lust /yet then be search't and pass without mistrust," and Carr was equally maligned in a revival of Thomas Bastard's 1598 epigram, *In Getam*, in which, as we may remember, Bastard satires the ambitions of an 'over reacher' of lowly birth.⁹⁸

In addition to criticism of the personal and moral failings of the bridal couple, the collusion of the legal system in the alleged depravity of court society was also suggested in another anonymous verse:

Letchery did consult with witcherye
How to procure frygiditye
Upon this ground a course was found
To frame unto a nullatye
And gravitye assuming lenyete
Gave strength to this impietye

⁹⁷ Bodleian Library, MS Malone 19, p.74, cited in Stephen Clucas, " ' To rauish and refine an earthly soul': Ficino and the Poetry of George Chapman," in *Marisilio Ficino: His Theology, His Philosophy, His Legacy*, pp. 419-442 (p.423).

⁹⁸ Joshua Eckhardt, "Love-song weeds, and Satyrique thornes," pp. 52, 63. See Chapter 2, p.108 for Bastard's epigram, which was circulated with the first line substituted to "When Carre in court at first a Page began."

Hoping thereby a way to spye
 To rise to further dignitye
 But whats the end both foe and friend
 Cry shame on such austeryte
 And book and bell do dam to Hell
 The Lord and Ladyes lecherye.⁹⁹

In spite of widespread condemnation of the match, however, and the scurrilous verses that circulated in connection with the case, some of the most celebrated lawyers and poets of the day supported Howard and Carr through the publication of poetic and prosaic defences of the marriage and the couple's conduct.

Among those who followed the royal lead in condoning the marriage were Sir Francis Bacon, John Donne, and George Chapman, who all came out in support of Howard's new alliance to the influential Carr in spite of the resistance of major figures like George Abbot, the Archbishop of Canterbury, who doubted the legality of Frances Howard's divorce from Essex. While John Donne expressed his willingness to write a defence of the marriage, Sir Francis Bacon financed the only masque produced by the Inns of Court for the occasion, that of the *The Masque of Flowers* presented by the gentlemen of Grays' Inn, and George Chapman produced a celebratory work, *Andromeda Liberata*, an epithalamion that was designed to counter the censure voiced by religious objectors, and refute the defamatory claims of Howard's wantonness that circulated the court. Sympathy was extended to Frances Howard on the grounds that she had first been married to Essex when still a child, and Chapman adopted an empathetic tone in order to illustrate Howard's former imprisonment in a loveless and (more importantly) an unproductive marriage.

Andromeda Liberata illustrates the union of Carr and Howard in relation to the mythological theme of Perseus and Andromeda, in which Andromeda/ Howard is

⁹⁹ Oxford, Bodleian Library, MS Rawlinson D 1048, fol. 64r, cited in Clucas, "Ficino and the Poetry of George Chapman," in *Marisilio Ficino: His Theology, His Philosophy, His Legacy*, pp. 422-423.

chained to a “barraine Rocke” (construed by many to be Essex) and is in danger of attack from a “vaste and dreadfull” whale that has laid waste to the cities and brought “all the noblest edifices...to ruine.”¹⁰⁰ The whale is the creation of the vengeful Neireides and is an allusion to the vulgar opinion that heaped infamy on Howard, an opinion Chapman characterises as created by the hypocritical complaints of puritanical Protestants and the vicious and idle wit of the satirists. The virginal Andromeda is saved by Perseus, and their subsequent union begets the sisters, Perse and Erythraea, and brothers, Electrion, Perseus and Sthenelus. Chapman’s supposed allusion to the ‘barraine’ or impotent earl of Essex caused much offence and the author was later forced to publish a defence of the poem, “*A Free and Offenceles Justification*,” in which he sought to contain what he characterised as ignorant and malicious interpretations of the classical theme.¹⁰¹

Adopting a Ficinian philosophy expounded in the *De Amore* of the *Opera Omnia*, Chapman’s *Andromeda Liberata* recasts the claimed adulterous affair of Carr and Howard in light of Ficinian theories that celebrate the virtue of reciprocal love, a love in which the souls of true lovers are interchanged.¹⁰² Perseus describes this union of souls in the love he feels for Andromeda:

While thee I love (sayd he) you loving mee
In you I finde my selfe: thought on by thee,
And (lost in my selfe by thee neglected)
In thee recover’d am, by thee affected:
The same in me you worke, miraculous strange
Twixt two true Louers is this enterchange (457-462).

¹⁰⁰ George Chapman, “The Argument,” *Andromeda Liberata* (1614), in *Literature Online*, <<http://lion.chadwyck.co.uk>> [accessed 23rd December 2010]

¹⁰¹ George Chapman, “A Free and Offenceles Justification” (London: Laurence L’Isle 1614), STC (2nd ed.) / 4977. 99849916 <<http://eebo.chadwyck.com>> [accessed 14th December 2010] Bodleian Library.

¹⁰² Clucas, “Ficino and the Poetry of George Chapman,” pp.423-424.

In linking the bridal couple's union to a Platonist theory of human love, Chapman celebrates Carr and Howard's morality and virtue as true lovers. The facts surrounding Howard's divorce and the bride's likely sexual maturity meant that the conventional rules of marriage, which had applied to her first marriage with Essex, were now in fact in danger of being breeched. Chapman's Ficinian celebration of the couple as true lovers works to counter a potentially obstructive socio-legal concept of marriage in favour of an elevated ideal of love's divinity. Love itself is the law that binds Carr and Howard, and in adhering to this law they demonstrate the highest virtue.

One of the principal projects of Anglo-Scottish union is well defined within the poem. The engendering of British subjects through the virtuous coupling of the bride and groom is indicated through Perseus's declaration that his chief intention in rescuing Andromeda was to save 'the life of likely race:'

Since generation, in continuance, makes
Mortals, similitudes, of powers divine,
Divine worth in generation shine.
Thus perseus sayd, and not because he sav'd
Her life alone, be her in marriage crau'd
But with her life, the life of likely Race
Was chief end of his action (509-512).

The virtuousness of creating new life is a major theme of the work, and Chapman makes an indirect criticism of Howard's former unproductive marriage by evoking Ficino's argument in *De Amore* on the rights of the unborn: "(he who) begrudges the light to the infant about to be born and denies life to his still unborn children" is more cruel even than the homicide who "cuts short existing life," a passage that was to

cause offence to the Essex faction.¹⁰³ The King's approval of the dynastic ambitions of the union, however, is clear, and is signified in the assertion that "Jove againe stoopt in a goulden showre / t'enrich the Nuptiall as the Natall howre / Of happy Perseus (517-519)," an allusion to Robert Carr's new title as the Earl of Somerset, which he received in honour of his union with Honora Denny.

While the celebrations for the nuptials were extremely lavish, the controversy surrounding the union is made clear in the criticisms of Chapman's epithalamion, which centred on alleged references to the Earl of Essex as the barren rock to which Howard had been previously chained.¹⁰⁴ The publication of Chapman's defence of the work appeared to do little to quell such criticism, however, and the problem Chapman faced in protecting his work is demonstrative of the politicisation of the written word that took place in response to Jacobean factionalism.

King James's failure to legalise the unification of Scotland and England was the primary political event that shaped domestic constitutional affairs in the first years of Stuart rule. A change in the law that finally realised James's plans was to take almost a century to take effect at a time when the assimilation of Scotland and England as part of Great Britain had largely taken place. The early social, political, and legal responses to the issues of union are uniquely represented in the literature produced in the first decades of the seventeenth century, and the political poetics of inter-racial marriage demonstrated in the works of George Chapman and Thomas Campion can be seen to offer a glimpse into the distinct political moment of the union's first creation.

¹⁰³ Clucas, "Ficino and the Poetry of George Chapman," p. 425.

¹⁰⁴ Clucas, "Ficino and the Poetry of George Chapman," pp. 432-433.

Chapter 4

Prismatic Truth: Lies and Legality in the Case of the Earl of Somerset

Like perspectives, which rightly gaz'd upon,
Show nothing but confusion, ey'd awry
Distinguish form.

(Richard II, 2.2 18-20)

The sense of disjuncture between imaginative concepts of moral justice and their reification in law is one that is explored with seemingly increasing self-awareness by writers of the seventeenth century. The conflict between a Protestant chivalric romanticism and Machiavellian moral cynicism and among ideas of allegiance that were complexly drawn between racial, religious and factional lines, together with the palpable distance between Protestant religiosity and the faith of an ecumenically inclined king, all contributed to an intellectual world in which truth was a deeply contested notion. In a world perceived to be beset by corruption, any attempts to apprehend that truth were felt to warrant extreme vigilance. During the opening scene of George Chapman's and James Shirley's tragedy of *Chabot Admirall of France*, the figure of the eponymous hero is compared to a "picture wrought to opticke reason": an anamorphic construction that can only be viewed aright by those who stand in the right place (I.sig. B3r).¹ The shifting form of Chabot can be viewed as "Now woman,

¹ See Introduction, p.1. The play was licensed on the 29th April 1635 and entered into the Stationers Register on 24th October 1638. The title indicates that it was played by Queen Henrietta's Men at the

now a monster, now a Divell /And till you stand, and in a right line view it /You cannot well judge what the maine forme is (I.sig.B3r).” Evoking the dangers inherent in misperceptions and faulty judgements based on merely “laterall or partial glances” at the truth (I.sig. B3r), Chapman’s allusion serves as a timely reminder that during the first decades of the seventeenth century the contested nature of ‘truth’ was dependent on perspectives drawn in relation to complex lines of alliance. Indeed, as the beneficiary of the patronage of Robert Carr, Earl of Somerset, and also until his death in 1612, of the young Prince Henry, George Chapman’s own capability to ‘stand in the right place’ within the factional positioning of the Stuart court was, as we shall see, deeply problematic.

Chapman’s allusion to art draws on an established tradition in which competing epistemological claims of how truth might be revealed were presented in visual form.² An early and much celebrated example is Hans Holbein’s *The Ambassadors*, a double portrait of the French ambassadors Jean de Dintville, Sieur de Polisy, and Georges de Selve, Bishop of Lavaur, which was painted in England during the royal divorce crisis of 1533. Resonant of the political intrigue and epistemological controversies at the historical moment of its production, the painting constitutes a self-conscious invitation to the viewer to translate its hidden meaning. Dominating the foreground of the work is a large anamorphic skull, while between the two subjects is a table strewn with a multiplicity of objects on which signs and clues are inscribed as a means of deciphering the painting’s secret messages.

“Private House in Drury Lane,” that is the Phoenix Theatre, formerly the Cockpit. There is no indication of playing dates, however, so dates of staging are uncertain.

² Textual works on spatial perspective and anamorphoses include Henrie Cornelius Agrippa, “Of the Arte Opticke,” in *Cornelius Agrippa, of the vanitie and vncertainty of artes and sciences*, (London: 1569), p.34.; Leonard Digges, *A geometrical practice, named Pantometria* (London: 1571). Metaphoric use of the concept is found in John Davies, “The Trinity illustrated by a three- square perspective Glasse,” in *Wittes pilgrimage, (by poetical essaies) through a vworld of amorous sonnets, soule-passions, and other passages, diuine, philosophical, morall, poetical, and poltical. By Iohn Daues* (London: 1605), sig. Iir -Kiv.

Like Chapman and Shirley's play, *The Ambassadors* is concerned with the decoding of truth. Although the ocular spectacle of anamorphosis provides a metaphor for the way in which a distortion of truth may be overcome, the central array of scientific, religious, and scholarly objects in Holbein's masterpiece signify disciplines in which could be found contesting versions of truth, and the objects themselves provide a concrete key to the systems of learning and enquiry in which various theories of truth were made available to an early modern elite. In spite of the scholarly tendency towards syncretism, the discourses of religion, science, philosophy and law produced divergent planes of reference for the construction of truth: concepts derived from empirical scientific study, the belief in forensic rhetoric as a means to establish veridical certainty, ideas of the truth as recoverable from neo-Platonic configurations of the meaning of myth, and perceptions of the truth as that provided by scriptural exegesis were all developed as the means with which truth could be procured.³

Anxiety surrounding the issue of how truth might be apprehended appears to be an overriding influence on a generically diverse corpus of texts and pictorial representations in this period. A thriving interest in visual perspective and anamorphic images during the early seventeenth century is, I suggest, related to this anxiety, an anxiety fuelled by the concept of the 'false images' that are produced by the human mind, a mind in which reason is corrupted due to the nature of man's fallen status. Francis Bacon, who, it will become evident, was to be deeply entrenched in the factional politics within the Stuart court, attributes man's faulty perception to just this inherent weakness and alludes to the "false appearances" with which the human mind is beset:

³ Diane Purkiss, "Testimony and Truth," in *The Witch in History* (London: Routledge, 1996), pp. 231-249 (p.231). Purkiss discusses these competing authorities in relation to the issues of proof and truth in trials for witchcraft.

For the mind of Man is farre from the Nature of a cleare and equall glasse, wherein the beames of things should reflect according to their true incidence ; Nay, it is rather like an enchanted glasse, full of Superstition and

Imposture, if it bee not deliuered and reduced. For this purpose, lette vs consider the false appearances, that are imposed vpon vs by the generall Nature of the minde.⁴

This awareness of the vulnerability of the human mind to imposture interrelates with a parallel scholarly concern over the indeterminacy of language. Indeed, the anxiety surrounding the concept of the relativity of truth, or truth as manipulatable by perspective is evident in the alleged threat to the discourse of law that is posed by the manipulation of words, a manipulation that Bacon identifies in conjunction with the false appearances reflected in the ‘enchanted glass’ of the human mind:

And lastly lette vs consider the false appearances, that are imposed upon vs by words, which are framed, and applyed according to the conceit, and capacities of the Vulgar sorte: And although wee thinke we governe our wordes, and prescribe it well... Yet certaine it is, that wordes, as a Tartar’s Bow, doe shoote backe vpon the vnderstanding of the wisest, and mightily entangle, and peruert the Iudgement.⁵

The risk posed to a supposedly unambiguous and incontrovertible truth by the ungovernable nature of language is here most relevant in relation to the discourse of the law and Bacon identifies the potential variability of interpretation that language affords. The amphibological use of words and phrases in which dual meanings confound an unequivocal interpretation of spoken or written statements is one part of the problem to which Bacon refers, but for Bacon and his contemporaries a more complex threat posed by the interpretative possibilities of language was exemplified by the doctrine of equivocation — a thesis that demonstrated as legitimate a form of

⁴ Bacon, *The Tvvo bookes of Francis Bacon*, p.56,v.

⁵ Bacon, *The Tvvo bookes of Francis Bacon*, p.57,r.

language game in which an individual's 'truth' saying is relative to his own perspective of what is true before God. The doctrine reflects Aristotle's theory of propositions in his *De interpretatione* 16a 1-8, which proposed that human thoughts are ordered into spoken, written, and mental propositions that when mixed can present a 'whole' truth that is half spoken and half thought.⁶

A much vilified example of this interpretative strategy is found in the Jesuit Henry Garnet's *Treatise on Equivocation* (c.1595), the original copy of which was recovered by Sir Edward Coke from the chambers at the Inner Temple of the recusant Sir Thomas Tresham in 1605.⁷ Garnet's subversive theory sought to realign concepts of truth-telling for Catholics subject to a legal discourse dominated by Protestant ideologists, and in so doing produced a justification for refuting the codes of truth shaped and demanded by secular law in favour of a system in which words and their omission are brought to bear on an alternative construction of the 'truth':

Whosoever frameth a trew pposition in his mynde and vttereth some part thereof in wordes, wch of them selves, beyng taken severall from the other parte reserved, were false, doth not say false or lye before God, howsoever he may be thought to lye before men (10-11).

This construction maintains a philosophical resonance with Justus Lipsius's neostoic philosophy of *prudential mixta*, or mixed prudence, which taught the virtue of verbal dissimulation in the interests of the common good. In a somewhat similar manner,

⁶ Kathryn Murphy, "Jesuits and Philosophasters: Robert Burton's Response to the Gunpowder Plot," *Journal of the Northern Renaissance*, 1.1 (2009), 109-128 < <http://www.northernrenaissance.org> > [accessed 10th December 2010] (pp. 119-121).

⁷ Henry Garnet, preface to *A Treatise of Equivocation* (1595), ed. David Jardine (London: Longman, Brown, Green, and Longman, 1851), p.vi. <http://openlibrary.org/books/OL14046060M/A_Treatise_of_Equivocation.> [accessed 10th December 2010] Further page references to this addition are given after quotations in the text.

Garnet's justification privileges the secret meaning of the mind of man, to which God alone is always privy, over the legal conventions of 'truth' telling under oath.⁸ While Garnet's concepts are characterised as "that tricke of false Equivocation/ Mens senses so to circumvent and flout" by one Protestant critic, a poetic tirade against the Gunpowder plotters of 1605 written by Francis Herring further describes how the Catholics "A hotchpot they, and mingle mangel make / Of things diuine and humane," thus indicating the difficulty posed by the confluence of two divergent paradigms for the construction of 'truth': a divine law (to which both Protestant and Catholic claimed superior knowledge), and the rhetorical language strategies of law.⁹

The revolutionary nature of Garnet's work, which A.E Malloch identifies as resonating with Martin Azpilcueta's 1584 treatise on the nature of human speech,¹⁰ rests also on its challenge both to the authority of the judiciary as the interrogators of the accused and to the judicial system under which they operate:

Ffirst, that the party who examineth must
be a lawfull superiour...
2. Secondly, he must have authority over
the pson whome he examineth...
3. Thirdly, the matter it selfe must be
subiect vnto the judge; for sometymes both
the judge is competent and the person not
exempted, and yet the matter wherof there
is controversyy is exempted...

⁸ See Adriana McCrea, *Constant Minds: Political Virtue and the Lipsian Paradigm in England, 1584-1650* (Toronto: University of Toronto Press, 1977), pp. 19-21.

⁹ John Vicars, *Mischeefes mysterie: or, Treasons master-peece, the Powder-plot Inuented by hellish malice, preuented by heauenly mercy: truely related. And from the Latine of the learned and reuerend Doctour Herring translated, and very much dilated. By Iohn Vicars* (London: 1617) STC (2nd ed.) / 13247, 99839746. < <http://eebo.chadwyck.com>. > [accessed 13th December 2010] (p.42). Henry E. Huntington Library and Art Gallery; Francis Herring, *Popish Piety, or The first part of the historie of that horrible and barbarous conspiracie, commonly called the powder-treason nefariously plotted against Iames King of great Britaine, Prince Henrie, and the whole state of that realme assembled in Parliament; and happily dis[ou]lered, disappointed, and frustrated by the powerfull and sole arme of the Almighty, the fifthe of nouember, anno 1605* (London : William Ione[s], 1610) STC (2nd ed.) / 13246, 99854241.< <http://eebo.chadwyck.com>. > [accessed 13th December 2010] (sig.B3v) British Library.

¹⁰ A.E. Malloch, and Frank L. Huntley, "Some Notes on Equivocation," *PMLA*, 81.1 (1996), 145 – 146.

The like

were if the cheife justice should intermedle
in matters of wardes, or marriages, or testa-
ments, weh belonge not to his courte...
4. Ffourthly, he must procede according
to a iust law...

even as the

law whan it is vniust is no lawe, so a judge
in the execution on an vniust law is no judge.
5. Ffynally, it is very necessary, for the
dew observation of order of law, that the
judge do not pceed against a man to ex-
amine hym to call hym into question, but
in cases which are publicke and manifest...

In these cases, whan order of law is not
observed, an man is not onely not bound to
confesse any thinge Of hym selfe, but he is
also bound to confesse nothing at all (68-69).

These strictures on what is, and what is not the correct order of law provides a means to confront the very terms under which the legal process operates. Underwritten in this construction is a concept of ‘law’ as that which can be identified as a natural or divine law ultimately authorised by God. The justness of a law administered by those who have a skewed perception of divine intention may thus be questioned and, by extension, the legal superiority of the persons who administer the law is in doubt.

While Henry Garnet’s treatise is frequently examined in relation to Protestant propaganda and the theory of Jesuit conspiracy in the Gunpowder Plot, the questions that it raises in relation to the authorisation and processes of law are also particularly apposite in relation to the perception of, and interaction with the legal process by a wider early modern ruling elite. The criticism of legal practice was not confined to the supposed extremists of the recusant population but was a common feature of early modern political life. Indeed, Peter Goodrich points to the “frequently unread

scholarly and critical as well as popular attacks on the reason and practice of England's legal profession" as the "history that shadows ... the common law."¹¹

These attacks on the law's authority can be seen as echoing the very disputes regarding legal jurisdiction that were taking place amongst lawyers themselves during the bitter arguments over the legality of judgements within various court jurisdictions. A primary example is the conflict between the common lawyers and the prerogative courts, most notable in the resistance of lawyers to the removal of cases to Chancery after a judgement at common law, a clash that was to escalate to alarming proportions in 1616.¹²

Quite apart from the internal legal disputes concerning jurisdiction, the legal fiction that characterised the court not solely as 'open court,' or even as a gathering in the public sphere as we might understand it today, but as a meeting in the judges' chambers, the chancery offices, or in fact in any other location where officers of the court conducted business, was arguably a contributing factor to a general sense that the law was not a uniform or impartial practice, but hidden, idiosyncratic, and personalised. Amidst the disquiet about the regularity processes and practices of the law, a fierce constitutional argument concerning how the ultimate law, that is God's law, should be rightfully transmitted throughout the realm was also taking place across a philosophical divide, a divide in which Garnet's ideas represented a radical extreme.¹³

In suggesting the circumvention of the authority of the common law in favour of a direct law of conscience, Garnet's treatise constituted a treasonous document in its

¹¹ Peter Goodrich, "Poor Illiterate Reason: History, Nationalism and the Common Law," *Social and Legal Studies* 1. (1992), 7-28. (p.20).

¹² Baker, *The Legal Profession and the Common Law*, pp. 206-209.

¹³ Baker, *The legal Profession and the Common Law*, pp.162-164. See Baker's discussion on the operations of, and disputes pertaining to the jurisdictions of courts, and also on Sir Edward Coke's apparent resistance to the encroachment of the royal prerogative on common law jurisdiction.

attempted subversion of an institution that operated in the name of the King, a subversion for which he was duly punished when his treatise became linked to the Powder Plot conspiracy of 1605. As we have seen, however, the nature of the Stuart monarch's role in relation to the English common law was subject to a degree of controversy. What were the connections between 'truth,' power, conscience, and law, and the monarch's duty to these in relation to his subjects? These were vexed questions that were explored, as we have seen, in a range of early seventeenth century dramatic and poetic texts in which 'law' was frequently re-conceptualised in forms not unlike the 'law of conscience' put forward in Garnet's radical thesis.

During this period difficult philosophical questions of law and morality were amplified by pragmatic concerns in relation to the politics of power within elite society. The concept that the monarch was not so much an arbitrator of the law but the originating site of law itself - a concept that shaped early modern continental legal systems - was one that was questioned in an alternative theory of English constitutional law; a theory that Paul Raffield identifies as propounded in the works of St. German, Richard Hooker, Bracton and Fortesque amongst others, and more radically during the early seventeenth century in the works of Sir John Holles and Sir Edward Coke.¹⁴ Resisting what Linda Levy Peck has termed "the increasing intrusion of the market into the court," Holles's resistance to the growing power of the royal prerogative and his perception of the lack of adequate legal restraints on the monarchy were the issues underlying his bitter censure of the sale of titles, in which even the stalwarts Fortesque and Bracton, whose writings on the legal constitution and prerogative rights could be variously construed, came under attack:¹⁵

¹⁴ Raffield, "Contract, Classicism, and the Common-Weal," p.90.

¹⁵ Linda Levy Peck, *Court patronage and corruption in early Stuart England* (Boston: Unwin Hyman, 1990), pp.212-213.

The prerogative (without looking back to Fortescu, Bracton and other doting Worme eaten fathers of our common law)...dilateth itself into many branches, tending chiefly to the encreas of the Kings power, and the augmentation of his revenues which being rather a byway, and unbeaten by antiquity, is for the most part succesless, allwaies distastefull and sumtimes dangerous...

The branches of the prerogative be impositions, either uppon inheritances, and commodities, or uppon our humors, and sumtimes vanities.¹⁶

Holles's comments on the impositions of the prerogative and their links with a court market economy allegedly rife with corruption found resonance in the writings of Sir Edward Coke, who resisted the abuse of prerogative rights with reference to the impartiality and superior moral standing of the law.

Coke's beliefs of the relations among authority and law denoted the law as a crystallisation of the 'pure reason' of God's law, which could be best disseminated by the interpreters of law who were studied in its history. In Coke's words, "the King hath no prerogative but that which the law of the land allows him."¹⁷ James, in contrast, believed himself to *be* the law as the earthly vicegerent of God and thus answerable only to the Almighty.¹⁸ Opposing the ideology of the absolute divine right of the monarch over the law, Coke thus characterised the common law not as a mere scheme of time honoured legislation for the ordering of the community, but rather as an almost sacerdotal function and a form of direct line to a divine or natural order, an idea at odds with James's theories of absolute monarchic prerogative.¹⁹

It appears that a constitutional theory that denied the person of the monarch as the sole site for the transmission of law and instead ascribed this function in part to

¹⁶ Cited in Peck, *Court Patronage and Corruption*, pp. 212-213.

¹⁷ Coke, "Proclamations," *The twelfth part of the Reports of Edward Coke*, p.76, cited in Raffield, "Contract, Classicism, and the Common Weal," p.77; see also Alan Cromartie, "The Constitutionalist Revolution: The Transformation of Political Culture in Early Stuart England," *Past & Present*, 163 (1999), 76-120 in *JStore* < <http://www.jstor.org/stable/651170> [accessed 23rd December 2010] (p.81).

¹⁸ Baker, *The Legal Profession and the Common Law*, p.206.

¹⁹ For further discussions on the concept of jurisprudence as a form of theology see Goodrich, "Poor Illiterate Reason," p.24, n.; Raffield, *Images and Cultures of Law*, p.9.

secular lawyers opened the way for dangerous alternative understanding of what constituted 'law' and 'legality.' If the common law was a distillation of a higher, natural, divine law that could be transmitted through persons, albeit only the *interposita persona*, the barristers and sergeants of law identified by Coke who were schooled in deciphering its meaning, it was a small step in reasoning for individuals like the Jesuit Father Garnet to claim this function for those who acted according to a law of conscience directed by their faith. Garnet appears to substitute Coke's idea of 'truth' as that recoverable through the morally superior enactment of law for an alternative concept of the moral superiority of a truth authorised by a specifically positioned religious conscience. Thus Garnet's thesis on a *modus operandi* for dealing with a legal system perceived by him as secondary in authority to that of his faith - a thesis that was characterised by its Protestant critics as instruction in lying and deceit - coheres with the philosophical legal debate that was taking place at the time of its inception, a debate in which shades of meaning were closely argued and in which it seems that a positivist concept of law was threatened, not solely by the 'false appearances' of words and the indeterminacy of language, but also by the questioning of the very terms under which the law courts operated.

It is not difficult to see how the trope of 'perception,' of seeing aright, was a particularly powerful image with which to characterise the complex issues surrounding 'lawful' power. These pointed concerns, especially that of the interaction between monarch and common law shaped not only legal exposition but also a range of literary and dramatic works patronised by the elite. Chapman and Shirleys's *The Tragedy of Chabot* has a distinct place in this canon, not least because of its suggestively obvious links with the King's personal life and the events surrounding the metamorphosis of Robert Carr who, as we have seen, rose from low born Scot to

pre-eminent statesman within the space of only a few years. Royal influence on the legal affairs of Carr throughout his rise to prominence and subsequent fall from grace after the death of Sir Thomas Overbury was overt, and ranged from the successful management of the divorce proceedings between Carr's future wife Frances Howard and the third Earl of Essex, to the manipulation of Carr's trial for the murder of Sir Thomas Overbury. *The Tragedy of Chabot's* explicit themes of perception, legality, and meaning locate it as at the centre of popular debates regarding the monarchy and the law, and the play is arguably also an attempt to re-write the history of Somerset's fall as the result of a tragic error of perception, a misinterpretation ensuing from what Chapman describes as a merely 'partial glance' at truth (I.sig. B3r).²⁰ How far the play may be read as a metaphoric representation of the circumstances of Carr's life and to what extent the play narrates contemporary concepts of legality and power bear closer scrutiny.

Textual Remains: The Somersets and the Death of Sir Thomas Overbury

The legal and personal issues relating to the cases of Robert Carr and Frances Howard have been subject to much critical study and *The Tragedy of Chabot* is only one among several works that have been identified as pertaining to the marriage of the couple and the ensuing public outrage that surfaced amid accusations of intrigue and murder shortly thereafter. Ignominious rumours surrounding the behaviour of Carr and his wife provided not only an uncomfortable reminder of James's personal involvement in Carr's marriage and the dishonour of the Essex divorce case, but also an embarrassing testimony to James's ill-placed favour. Critics were not silent on this

²⁰ The initial critique of the play as an allegory of the Somerset story is found in Norma Dobie Solve, *Stuart Politics in Chapman's Tragedy of Chabot* (Ann Arbor: University of Michigan Press, 1929), pp.1-4, 84-120.

issue, and suggestions of the King's own lack of judgement in relation to the extravagant honours he had bestowed on Carr circulated at court: "where honors haue a true beginning, a ground of vertue springing vp by noble deserts...there cannot choose but follow a fruitfull haruest...contrariwise to obtaine sodaine Honors begets Pride and Vaine-glory ...Brittle is that greatnes that fadeth in a moment."²¹ In the case of the Somersets the fruits of union were to prove bitter indeed, and the marriage that James had celebrated with such lavish favour in his drive for unification yielded a dangerous speculation as to the monarch's lack of integrity and the unprecedented corruption of his court.

Allusions to what may be described as this most sensational of Stuart political scandals may be perceived in a variety of seventeenth-century imaginative texts ranging from dramatic works with themes of witchcraft and the demonic nature of the female, like Thomas Middleton's *The Witch*, and *The Changeling*, to romance literature, notably Lady Mary Wroth's prose romance, *Urania*, and William Browne's *Britannia Pastorals* (1616).²² Chapman and Shirley's *The Tragedy of Chabot* can also be included in this list, although the convincing case made for the play as an allegory of Somerset's fall is argued in relation to questions of dating, which are somewhat inconclusive. First published in 1639, it is generally acknowledged that the play was at some point revised by James Shirley. Although suggestions have been made that the original text was written as early as 1611 – 1614, a date acknowledged by Albert H. Tricomi in 1982, several other scholars including Norma Dobie Solve

²¹ Anon, *The bloody dovnfall of adultery. murder, ambition at the end of which are added Westons, and Mistris Turners last teares, shed for the murder of Sir Thomas Ouerbury poysoned in the Tower; who for the fact, suffered deserued execution at Tiburne the 14. of Nouember last. 1615* (London: 1615) STC (2nd ed.) / 18919.3, 99848784. < <http://eebo.chadwyck.com>. > [accessed 14th December 2010] (sig. B3r-C) Henry E. Huntington Library and Art Gallery. Also cited in Levy Peck, *Court Patronage and Corruption*, pp. 177-178.

²² See Purkiss, *The Witch in History*, pp. 215-216; Alastair Bellany, *The Politics of Court Scandal in Early Modern England: News Culture and the Overbury Affair, 1603-1660* (Cambridge: Cambridge University Press, 2002), p.251.

(1929), Irving Ribner (1960), and G. Blakemore Evans (1987) propose a later date for the play's composition of c1621.²³ In a more recent study that investigates the themes of corruption within the play, Luke Wilson argues that Chapman's habitual referencing of contemporary events in his plays and poems makes it credible that *The Tragedy of Chabot* contains topical illusion to both the relationship between Somerset and James, and also to Francis Bacon's central role in Somerset's trial.²⁴

The contextual frame for *The Tragedy of Chabot* can be better understood after a short reflection on the events that took place during the three years between Sir Thomas Overbury's death in 1613 and Robert Carr's appearance in court on charge for his murder in 1616. The Earl of Somerset was indicted for the crime in January 1616 and was tried some four months later on the 25th May, a day after his wife, Frances Howard, had been tried and convicted for the same offence. The trials of the couple, which were conducted by Lord Chancellor Ellesmere and Sir Frances Bacon in the presence of a jury of peers in Westminster Hall, were the culmination of a lengthy investigation into Overbury's demise that had already produced a series of well publicised convictions for his murder, convictions that had been presided over by a zealous Sir Edward Coke.²⁵

Overbury died in the September of 1613 following his committal to the Tower in the April of that year for alleged contempt. While Overbury's imprisonment was prompted by his refusal to take up a foreign ambassadorship at the request of the King, his incarceration was also advantageous to a newly formed faction led by the great uncle of Frances Howard, Henry Howard, the Earl of Northampton together

²³ For summaries of the discussions on dating see Solve, *Stuart Politics* pp. 63-64, and Luke Wilson, "The Rich Cabinet: Bacon, Chapman, and the Culture of Corruption," in *Solon and Thespis: Law and Theater in the English Renaissance*, ed. Dennis Kezar (Notre Dame, Indiana: University of Notre Dame Press, 2007), pp. 218-263 (p.261. n).

²⁴ Wilson, "The Rich Cabinet," p.240.

²⁵ Alastair Bellany, *The Politics of Court Scandal*, pp.77, 241.

with Frances's father, Thomas Howard, the Earl of Suffolk, and Robert Carr.²⁶

Overbury had been a fierce opponent to Carr's prospective marriage to Frances Howard, a fact that was to later provide a supposed motive for Howard's involvement in his murder, and there was also suspicion that Overbury held secret and damning information about Somerset, who until his plans for marriage to Frances had been a close associate of Sir Thomas. Certainly Overbury's factional interests ran counter to those of the Howards, and his previous intimate relationship with Carr had made him party to information that could perhaps be used to unsettle the new alliance between the family of Frances Howard and her prospective husband.²⁷

The more astonishing theories regarding the secret information to which Overbury may have been party are in part derived from retrospective narrations of James's reign produced in the 1650's. Both Sir Anthony Weldon in *The Court and Character of King James* (1650), and Arthur Wilson in *The Life and Reign of King James I* (1653) propose that James's heir, the young Prince Henry was poisoned in 1612 and furthermore suggest that Overbury's death was somehow linked to that of the Prince.²⁸ Assuming the properties of a Senecan plot and reminiscent of the macabre domestic drama in *Gorbuduc*, the stories told in these historical accounts turn on the involvement of James with the death of his own son and the possible participation of Carr and Overbury in the same. It seems that suggestions as to a deeper layer of conspiracy connected with the death of Sir Thomas Overbury were also being made at the time of Somerset's trial, and an anonymous libel hints at the rumours circulating at court: "Tis painful rowing 'gainst a big swoll'n tide/Nor dare we say why Overbury

²⁶ David Lindley, *The Trials of Frances Howard: Fact and Fiction at the Court of King James* (London: Routledge, 1996), p.145. Lindley provides a comprehensive study of the events in the case to which I am indebted for the summary in the following pages. See pp. 145-192.

²⁷ Lindley, *The Trials of Frances Howard*, p.145.

²⁸ For a discussion of events as described in these works see Debora Shuger, "Paper Bullets: Texts, Lies and Censorship in Early Modern England," in *Solon and Thespis*, ed. by Dennis Kezar, pp.163-196 (pp.175-177).

died.”²⁹ A more direct suggestion of a causal link between Overbury’s death and that of Prince Henry is found in Sir Edward Coke’s reported expostulation during the trial of an alleged co-conspirator in the Overbury plot, Sir Thomas Monson, “that Overbury’s untimely Remove had something in it of Retaliation, as if he had been guilty of the same Crime against Prince Henry,” an assertion that gave credence to the conspiracy theories that continued to circulate for several decades after the event.³⁰ The real extent of Somerset’s participation, if any, in a plot to murder either Prince Henry or Thomas Overbury remained unproven however, and the questions as to whether Overbury’s incarceration was simply a convenient means to silence him during the Essex annulment proceedings of 1613, or whether Somerset and Northampton were engaged in a more sinister plot to render Overbury permanently silent remains unanswered.³¹ Alternative theories of the circumstances of Overbury’s imprisonment shift direct blame from Carr and Northampton and instead propose the King as instrumental in Overbury’s continued incarceration, not least because of the rivalry between James and Overbury for the affections of Robert Carr.³²

Whatever the real circumstances surrounding Overbury’s removal to the tower, it is clear that ominous speculation that he had been murdered first became public in the summer of 1615. As David Lindley notes, the investigations into Overbury’s death were undoubtedly politically motivated and the factional manoeuvrings that drove the investigation are made plain by the observations of an outsider, Francesco Quaratesi, who was at that time an official with the Tuscan Embassy:

²⁹ BL Egerton Ms 2230, fo. 69r, cited in Bellany, *The Politics of Court Scandal*, p. 7.

³⁰ Debora Shugar, “Paper Bullets,” in *Solon and Thespis*, p. 176, citing Arthur Wilson, *The History of Great Britain*, p. 89.

³¹ Linda Levy Peck, *Northampton: Patronage and Policy at the Court of James I* (London: George Allen & Unwin, 1982), p.39

³² See Bellany, *The Politics of Court Scandal*, pp.50-51.

The faction opposed to the Lord Treasurer and Lord Chamberlain [Suffolk and Somerset] (who are presently the Archbishop of Canterbury, Secretary Winwood, the earl of Arundel, the Earl of Pembroke, milord Fenton Montgomery [sic] the new favourite of the King George de Villiers and some others, have now brought again to light this thing done long ago, and have a witness questioned, who testified how the above-mentioned Overbury died because of the poison given to him in some medication, and this on behalf of the Earl of Suffolk and of the Countess his wife.³³

Quaratesi refers to the beginning of what was to become a lengthy and ruinous exercise with regard to the fortune and political influence of Robert Carr and also to the financial well being of his supporters. Chapman, who may be included among the latter, failed in fact to find a sponsor able to maintain lasting political ascendancy and in 1618 Thomas Howard, father-in-law to Robert Carr and patron to Chapman was disgraced and charged with corruption, while another of Chapman's benefactors, Lionel Cranfield, suffered the same fate in 1624.³⁴ Amongst the first to come under suspicion in the murder investigation that was to mark the beginning of the end of the Howards' political dominance in 1616 were Sir Gervase Elwes, the Lieutenant of the Tower; and Richard Weston, Overbury's keeper; both of whom it was later discovered had been recently appointed to their positions at the behest of the Howards. Rumours of murder escalated when Elwes admitted under examination that he had been aware of a plot against Overbury's life, and in an attempt at his own defence Elwes recounted how on one occasion he had successfully prevented Richard Weston from adding the contents of a vessel of liquid (supposedly containing poison) to Overbury's food. According to Elwes's testimony it was Weston who later disclosed to him that Overbury had been killed with a clyster laced with poison,

³³ Martin Butler and David Lindley, "Restoring Astraea: Jonson's Masque for the Fall of Somerset," *English Literary History*, 61.4 (1994), 807-827 in *JStore* < <http://www.jstor.org/stable/2873359> > [accessed 23rd December 2010] (p.815), quoting Anna Maria Crino, "Il Processo a Lord e Lady Somerset per L'Assassinio di Sir Thomas Overbury Nelle Relazioni di Francesco Quaratesi e di Pompilio Gaetani," in *English Miscellany* 8 (1957), p.261. See also Lindley, the *Trials of Frances Howard*, p.157.

³⁴ Peck, *Court Patronage and Corruption*, p.181-182.

which Weston claimed had been secretly administered by an assistant of the apothecary James Franklin.³⁵

Echoing a sensationalist form of seventeenth-century poison plot in which the horror of murder is exacerbated by the particularly heinous and secret method used to effect it, Elwes's testimony appears to bear witness to a familiar paradigm of evil. A complication, however, in assessing the reliability of the accusations of poisoning in Overbury's case lay in the fact that Overbury had been dangerously engaged in taking certain medicines to either feign illness, or to exacerbate an existing condition, in order to elicit sympathy from the King, and thus make a bid for clemency on the grounds of ill health. While Elwes's account conforms to a popular narrative of poisoning made familiar to a seventeenth century audience through a range of treatises, tracts and plays, it was by no means proven that the real potions and remedies mentioned in Elwes's testimony were anything other than the medicinal means for implementing Overbury's own scheme to secure his freedom.³⁶

Somerset appears to have been at least superficially complicit in Overbury's plan to elicit the King's mercy, and a letter written by Overbury from the Tower in which he outlines to Somerset his next move in his bid for release indicates that Somerset was aware of Overbury's use of medicaments: "Then will I use this vomit four dayes after, which will be a new occasion for you to be importunate to send me into the country to save my life."³⁷ Somerset's apparent connivance in the scheme can of course be read in several ways: either as a means to convince his former friend of his good intentions whilst keeping him safely silenced, or as part of a genuine strategy to

³⁵ Lindley, *The Trials of Francis Howard*, p.147.

³⁶ For example see Thomas Tuke, *A treatise against painting (sic) and tincturing of men and women* (London: 1616) STC (2nd ed.) / 24316, 99855745 < <http://eebo.chadwyck.com>.> [accessed 23rd December 2010] (p.50-52). Bellamy has noted the references to the Somerset case in this tract in *The Politics of Court Scandal*, p.117. Tuke makes direct allusion to the Overbury murder on p.52.

³⁷ Lindley, *The Trials of Frances Howard*, p.146, citing BL MS Harley 7002, fol.286v.

secure Overbury's release from the Tower when the time was right, or, alternatively, as a vicious ploy to stage Overbury's illness so that his subsequent death would not raise suspicion.

A puzzling facet of the story noted by Alastair Bellany is Overbury's belated capitulation to the political pressures exerted by the Howards and the subsequent reconciliation between Overbury and his detractors just prior to Overbury's demise. This supposed appeasement is made clear in a series of letters exchanged between Suffolk, Northampton and Overbury in the weeks before Overbury's death.³⁸ In spite of Overbury's expectations to the contrary, however, a pledge of allegiance failed to secure his release and some few days before his death Overbury wrote to Carr accusing him of betrayal and also issuing threats that he would ruin Carr by making public the details of their former alliance. Overbury's end followed swiftly afterwards. As Bellany argues, on the face of this evidence it does not appear that Carr and the Howards had intended Overbury's murder. From a different perspective however, the threats to Carr made by Overbury during the days before his death raises once again a spectre of doubt in relation to Carr's reactions to the possibility of some form of exposure.

In fact Overbury's failing health and subsequent death were never conclusively confirmed by a coroner's report to be the result of poisoning; instead, his murder was proven solely through confessions elicited from a cast of murder suspects who fell under the enthusiastic and biased prosecution of Sir Edward Coke.³⁹ Anne Turner, a suspected witch and the confidante of both Frances Howard and the conjurer Simon Foreman; together with the apothecary Franklin, who was accused of providing the poisons to kill Overbury; and also Richard Weston; Sir Gervase Elwes; and even Sir

³⁸ Bellany, *The Politics of Court Scandal*, p.55.

³⁹ Lindley, *The Trials of Frances Howard*, pp.146,149.

Thomas Monson, who had a tangential bearing on the case because of his involvement with appointing Elwes to the Tower, were all brought to trial where they protested their innocence and came under the fervent cross examination of Coke. Successful in prosecuting all suspects with the exception of Monson, who was acquitted through a complete paucity of evidence against him, Coke was satisfied that justice had been done and a rush of executions duly followed.⁴⁰

With the fact of Overbury's murder established through the trials of Franklin, Turner, Weston, and Elwes during the latter months of 1615, the way was paved for the prosecution of Frances Howard and Robert Carr as accessories after the fact. The case against Frances Howard appeared unassailable when it was alleged that prior to Overbury's incarceration in the Tower she had approached Sir David Wood, who had recently quarrelled with Overbury, and tried to persuade him to duel with Overbury in return for a payment of one thousand pounds.⁴¹ Frances's plea of guilty to the charge of murder and subsequent request for clemency spared her the ordeal of cross-examination by Lord Chancellor Ellesmere during her short trial. Robert Carr, however, maintained his innocence and continued to do so during a twelve- hour trial that was led by Sir Francis Bacon before Carr's peers in Westminster Hall.⁴² In terms of the legal response to Overbury's murder, a difference in perspective between Sir Edward Coke, the champion of the common law, and the staunch regalist, Sir Francis Bacon, is clear, as we shall see. On the most rudimentary level, the King's instructions to Bacon to conduct Somerset's trial in such a way that a pardon could subsequently be justified, although adhering to the accepted concept of monarchic rights in acts of pardon, appears to strike at the heart of Coke's beliefs in common law

⁴⁰ For an account of Monson's trial see Lindley, *The Trials of Frances Howard*, p. 149; Bellany, *The Politics of Court Scandal*, p.77.

⁴¹ Lindley, *The Trials of Frances Howard*, p.175.

⁴² Bellany, *The Politics of Court Scandal*, pp. 241-242.

justice and the alleged impartiality of the common law legal process.⁴³ It is this contentious issue of the bias of the law and the King's influence within it that Chapman's *Tragedy of Chabot* addresses.

Personal Politics: Chapman's *The Tragedy of Chabot Admirall of France*

Within the context of the unprecedented and much publicised events surrounding the Overbury case, and particularly in view of the protagonists' close proximity to the Crown, the *Tragedy of Chabot's* exploration of the relations among politics, truth telling, and legality, together with its emphasis on the personal nature of the interaction between ruler and courtier render the play highly topical for a seventeenth-century audience, although it is unclear whether it was ever performed and there are suggestions that its contentious subject matter prevented its public staging.⁴⁴ The play is based on Etienne Pasquier's French history, *Les Recherches de la France*, in which the account of the honourable Chabot, and Poyet, the King's corrupt chancellor first appears. Pasquier's publication of 1611 provided an explication of the moral messages within the story, in which he first proposed that it is the foremost duty of the judiciary to act solely according to the principals of law as apposed to the vagaries of the royal will, and secondly, that trial in a court of law for those involved in grand affairs who fall out of favour with their king will inevitably be prejudicial and should thus be avoided if at all possible.⁴⁵ As Irving Ribner notes, Chapman's re-working of the play retains Pasquier's focus towards these issues of royal responsibility and legal

⁴³ Wilson, "The Rich Cabinet," p.239; Lisa Jardine and Alan Stewart, *Hostage to Fortune: The Troubled Life of Francis Bacon* (London: Victor Gollancz, 1998), pp.369-373.

⁴⁴ Irving Ribner, "The Meaning of Chapman's 'Tragedy of Chabot,'" *The Modern Language Review*, 55.3 (1960), 321-331 in *JStore* < <http://www.jstor.org/stable/3721327> > [accessed 23rd December 2010] (p. 322).

⁴⁵ For Pasquier's account see Solve, appendix to *Stuart Politics*, and Ribner, "The Meaning of Chapman's 'Tragedy of Chabot,'" p.323.

corruption, which is developed through an account of the French King's misunderstanding of the intent and character of his Admiral and erstwhile favourite, the justiciar Phillip Chabot.⁴⁶ Unjustly tried for treason at the hand of the treacherous Poyet, who in turn is tried on charges of corruption when his duplicity is discovered, Chabot is a tragic figure whose untimely death is the result of his inability to recover from the hurt he sustains as a result of the King's maltreatment.

In Chapman's re-telling of Pasquier's story Chabot is described as having a special place in the King's affections, a place that has recently been challenged by a new favourite, Duke Montmorancie, the Lord High Constable of France. The relative merits of Chabot and his rival Montmorancie, "Who drinke as deepe as he of the streame Royall (I.sig. A2)," forms the basis of discussion in the play's opening scene in which the Constable's connivance with the politicking of administrators is unfavourably compared to Chabot's independence and his conscience driven sense of morality. Although the King has brought about a reconciliation between these two very different men, this unity is sabotaged by Poyet who plots to destroy Chabot by manipulating Montmorancie into seeking the King's approval for an unjust legal bill that he knows Chabot will oppose. In what is characterised as an unwavering loyalty to the true justice of the state, Chabot knowingly denounces and destroys the bill. As an uncompromising moralist unable to condone injustice even when sanctioned by the King's law, the Admiral's obduracy and independence are recognized as virtues of conscience:

And the Almighty wisdom, having given
Each man within himselfe an apter light
To guide his acts, than any light without him
(Creating nothing not in all things equall)

⁴⁶ Ribner, "The Meaning of Chapman's 'Tragedy of Chabot,'" p.323.

It seems a fault in any that depend
On others knowledge, and exile their owne (I.sig. Coo r.)

A privileging of individual scruple over the formal precepts of law is further developed in this scene through a comparison of Chabot's independence and high flown concept of his duty to king and state with the mere judicial pragmatism of Montmorancie, who while appearing to adhere to the 'letter' of the law "Explores not so sincerely/ The course hee runnes, but takes the mind of others/ (by name judicial) for what his owne/ Iudgement, and knowledge should conclude (sig. Coo v.)." This opening scene foregrounds the legal themes of the play in rhetorical terms with reference to *causae legales*, or questions of law, the branch of forensic rhetoric specifically concerned with definition, ambiguity, and with arguments about jurisdiction and process, (*translatio*). Within this context the discussion regarding the relative merits of Chabot and Montmorancie signifies the legal debate that comes under the term of *scriptum et voluntas*, or the arguments regarding the 'spirit' of the law as opposed to the 'letter' of the law and the play engages with the moral considerations that pertain to just these rhetorical arguments.⁴⁷

In the play world Poyet's jurisdiction is demonstrative of the corruption within the legal process, and the Chancellor's law is characterised not as the means for equitable justice but as a bargaining tool in the art of "pollicie," here taken in its pejorative sense as a form of deception. Chabot is an embodiment of the true spirit of the law and as such his sense of honour and integrity is at odds with the base senses of his legal opponents, who operate within an amoral milieu of treacherous factional politics. In such an environment royal favour is a dangerous honour:

⁴⁷ Maclean, *Interpretation and Meaning in the Renaissance*, p.77-78.

Tis an offence enough to be exalted
 To regall favours...
 What man was ever fixt 'ith Sphere of honour,
 And precious to his Sovereigne, whose actions,
 Nay very soule was not expos'd to every
 Common and base dissection? and not onely
 That which in Nature hath excuse, and in
 Themselves in priviledg'd by name of frailtie,
 But even Vertues are made crimes, and doom'd
 Toth' fate of Treason (I.sig. B.3.v.).

Within this “vile degenerate age (I.sig.B.3v.),” personal gain emerges as the primary objective of those who administer the business of government, a state of affairs that appears to give credence to the Machiavellian concept of man’s corrupt nature and his perpetual “restless desire after power” which drives him until death.⁴⁸ This vision of a corrupted world is familiar in Chapman’s work and finds poetic expression in his *Hymnus in Noctem* (1594) in which man’s intellect is described as obscured by the shadow of the false night. Commenting on an age when “A stepdame Night of mind about us clings/Who broods beneath her hell obscuring wings (63-64),” Chapman deplores the lack of intellect and spirituality that makes men “all to slaughter bent/Like envie, fed with others famishment (89-90).”⁴⁹ A similar dystopia threatens to overcome the play world wherein a failure of law is manifest and virtue is obscured by confusion and base ambition.

As is characteristic of Chapman’s work, *The Tragedy of Chabot* is a multi-layered text that encompasses several planes of reference and invites interpretation on a number of levels. Essentially a play about the legal process and its corruption, it also acts in the form of a love story between Chabot and the King that provides a schema of the personal entanglements that shape the processes of rule. From the latter

⁴⁸ See Chapter 3, p.146.

⁴⁹ George Chapman, “Hymnus in Noctem” in *Skia nyktos, The shadow of night containing two poeticall hymnes deuised by G.C. Gent* (London: 1594) STC (2nd ed.) / 4990, 99840671. < <http://eebo.chadwyck.com>. > [accessed 14th December 2010] (sig. Aiiiijr - Bv) Henry E. Huntington Library and Art Gallery.

perspective, one of the most controversial aspects of the play is its potential as an interpretation of what may be described as the psychology of dependence that exists between the monarch and his personal favourite. Irrespective of its consistency as a direct allegory of Robert Carr's relationship with the King, the *Tragedy of Chabot* provides a subtext that illustrates the psychological world of monarch and courtier, and in so doing is suggestive of the way in which private concerns overlaid political judgements during the early decades of Stuart rule. One author of the period puts it bluntly: "The greatest events of this reign such as they are...turn upon the Passions and Vices of Minions and Favourites."⁵⁰ While this claim may be dismissed as an exaggerated comment on court life, Chapman's dramatisation of the relationship between his noble protagonists also illustrates a fundamental privileging of the personal over the political, so that in Chapman's play world the catastrophic misconception that leads to the death of Philip Chabot demonstrates the susceptibility of a monarch whose personal relationships become inextricably entangled with affairs of state – a scenario that appears particularly germane to James and his Court.

The especial vulnerability of a monarch who loses sight of the clear distinctions between his personal and political realm is most clearly demonstrated in the play's final act when the extent of the King's personal tragedy at the loss of Chabot is made clear. In words that resonate with the poetic celebrations of love or the marriage bond, Francis claims that the intensity of his love for Chabot transcends even death. Chapman uses a familiar trope of one love living in another's heart to signify the immortality of their union:

When time and nature joyne to dispossesse

⁵⁰ Solve, *Stuart Politics*, p. 41 citing John Oldmixon, *The History of England during the Reigns of the Royal House of Stuart* (London: John Pemberton, 1730), p.43.

My body of a cold and languishing breath,
 No stroake in all my arteries, but silence
 In every faculty, yet dissect me then,
 And in my heart, the world shall read thee living,
 And by the vertue of thy name write there,
 That part of me shall never putrifie,
 When I am lost in all my other dust (V. sig. I2v.)

The tragedy of Chabot's poignant death is that it has been brought about by the King's lack of insight, a failure that had allowed the Admiral's enemies to manipulate both the King and Chabot into a personal enmity that becomes the catalyst for Chabot's decline. Providing, as we shall see, a curious echo of James's rhetoric of love in his correspondence to Somerset in 1615, the death of Chabot is a death through love, an action of self-destruction brought about by grief.

In the second act of the play during a discussion of Chabot's 's tenacious adherence to his concept of true justice, and while the King's misconceptions of Chabot are developing, the crux of their disagreement can be characterised as the distance between Chabot's concept of his own merit and the King's jealous notion of his favourite as his own creation:

You will have justice, is your will so strong
 Now against mine? Your power being so weake
 Before my favour gave them both their forces
 Of all that ever shar'd in my free graces,
 You *Philip Chabot* a meane Gentleman
 Have not I rais'd you to a supremest Lord,
 And given you greater dignities than any...

Have I not made you first a Knight of the Order,
 Then Admirall of *France*, then *Count Byzanges*,
 Lord, and Livetenant generall of all
 My country, and command of *Burgady*;
 Livetenant generall likewise of my sonne
Daulphine, and heire, and of all *Normandy*,
 And of my chiefly honour'd privy counsell,
 And cannot all these powers weigh downe your will (II. sig.C3r.)

The theory of exchange propounded by the King privileges the outward signs of wealth and power as markers of individual worth, a concept at odds with Chabot's sense of self. It is Francis's inability to distinguish between the outward and the inward that distorts his perception thus he is unable to see that it is in fact Chabot's moral rectitude that prevents him from sullyng the King's honour with any compromise of the laws that operate in the royal name.

Francis's subsequent decision to test Chabot at law is a move merely designed to cure the Admiral of his arrogance, and as such, is an abuse of prerogative powers. Law is a game played at the King's instigation and one in which he can manipulate the rules. Presented as a form of wager, the King speculates that Chabot's high-flown morality can be disproved and invites the Admiral to put his official record to the test of the judges in order to prove his point. As Francis says, "Ile throw the dice," a proposal to which Chabot agrees whilst maintaining that his honesty ensures that no charge can be brought against him. The King's error is one of logic. In employing conflicting rules of proof, i.e. that truth can be recovered from the sifting of law, but that that truth is determinable through the rules of chance, Francis signals both the impossibility of a clear result from this method of judgement and frames the question of the precariousness of legal adjudication, a topical subject in the real world of 1616 in which arguments were surfacing in relation to the relative authorities of the Kings Bench and Chancery, as we shall see. Like Rabelais' judge Bridoye who casts a dice to decide judgements, and who when accused of error admits only to having misjudged the dice, the King fails to see the error of his methodology for ascertaining the truth.⁵¹

⁵¹ Maclean, *Interpretation and Meaning in the Renaissance*, p.130. Maclean cites this example from Rabelais, *Le Tiers Livre* (1546), chs.39-43, in relation to legal ambiguity.

The assumption that the law is vitiated by the excessive use of prerogative power is reinforced during Francis's soliloquy in Act IV, a speech that exposes the purely personal preoccupations of the King in relation to Chabot. Recourse to law on the part of the King is merely a tool with which he can regain the Admiral's good will, and as he reveals his purely arbitrary motives for exposing Chabot to trial, Francis announces his intention of rectifying the court's decision with a royal pardon:

I joy this boldness is condemn'd, that I may pardon,
 And therein get some ground in his opinion
 By so much bounty as saves his life,
 And me thinks that weigh'd more, should sway the balance
 Twixt me and him, held by his owne free luctice,
 For I could never finde him obstinate
 In any minde he held, when once he saw
 Th' error with which he laboured, and since now
 He needs must feele it, I admit no doubt,
 But that his alteration will beget
 Another sence of things twixt him and me...(IV.sig.F3r.)

Francis has misjudged Chabot, however, who refuses an offer of clemency and instead insists on his innocence in relation to the charges against him. In this instance, Chabot's refusal of a pardon on the grounds that its acceptance would be tantamount to an admission of guilt is heavily suggestive of the real events surrounding the conviction of Chapman's patron, Robert Carr, in 1616. Unlike his wife, Francis Howard, and in spite of much pressure from James's agents, Carr refused to countenance the suggestion that he plead guilty to Overbury's murder in exchange for a pardon from the King - a scheme devised by James and Francis Bacon prior to Somerset's trial. There is also some evidence of Carr's continuing refusal to make any concession in order that a pardon could be granted, and it appears that

Chapman here makes a connection between the alleged innocence and moral fortitude of his patron, Somerset and that of the redoubtable Chabot.⁵²

As a distillation of Pasquier's original text, which is in itself is an interpretation of historical events in France, Chapman's *Tragedy of Chabot* may be read as representing only a passing resemblance to the events involving Somerset in 1616. Changing preoccupations in scholarly literary criticism have produced a variety of perspectives on the play, and the allegory first noted by Norma Dobie Solve in 1928, whilst frequently referenced, has remained peripheral to several subsequent interpretations of the work.⁵³ Irving Ribner, for example, discounts an allegorical reading of the play on the literal grounds that the death of Chabot does not reflect Somerset's own continued survival.⁵⁴ Direct similarities between the relationship of king and courtier in the play world and those within the Stuart court are strikingly persuasive in this multifaceted drama, nonetheless, and Ribner's analysis fails to recognise the allegorical core of the work.

As we have seen in Chapman's *Andromeda Liberata*, in which love is privileged as a natural law that transcends that imposed by earthly conventions, it is the world of the emotions that is the key to Chapman's allegorical schema.⁵⁵ Chabot's death signifies an emotional death – the killing of love's spirit, which is an essence that once betrayed cannot be resurrected by external means. Honours and pardons are shown as mere trappings within this psychomachia, for Chabot mourns the perceived death of love's soul, and it is in this real sense that Chapman allegorises the emotional virtue of his patron in the physical death of Chabot. Chapman remained a constant supporter of Somerset both during the controversial marriage to Francis Howard and

⁵² Solve, *Stuart Politics*, p.59.

⁵³ Solve, *Stuart Politics*, p.121.

⁵⁴ Ribner, "The Meaning of Chapman's *Tragedy of Chabot*," p.321.

⁵⁵ See Chapter 3, pp.183-185.

also after Somerset's imprisonment for the murder of Sir Thomas Overbury. Given Chapman's close associations with Robert Carr, it would be unreasonable to suppose that the apparent coincidences of circumstance shared by the protagonists in Somerset's case and the characters in Chapman's play world, even if redeveloped in a more overt way by Shirley at a later date, were not in some way dependent on Chapman's experience of his patron's relationship with the King, especially as that relationship held such significance for Chapman's own well being.

As Norma Dobie Solve suggests in her reading of the play as a political allegory of Somerset's fall,⁵⁶ Chapman and Shirley's version of Chabot, although maintaining the general themes identified by Ribner as deriving from Pasquier, presents a different focus for Chabot's maltreatment at the hands of the judiciary: it is not, as in Pasquier's plot, solely the King's caprice that places Chabot in court, but the scheming of a faction comprising the King's Chancellor, his Secretary, his Treasurer, and his Queen, and as no mention is made of the rivalry between the King's favourites in Pasquier's text this aspect of the story is an obvious addition by Chapman.⁵⁷ In fact as Solve demonstrates, the cast of characters in Chapman's play world can be seen to closely mirror those on the political stage who were Somerset's enemies during the crisis of his trial and disgrace: the new favourite George Villiers, Duke of Buckingham, who rapidly replaced Somerset and experienced a similar meteoric rise to power; and the Chancellor in waiting, Francis Bacon, who was to replace the ailing Ellesmere soon after Somerset's conviction, and who together with the King's Treasurer, Sir Henry Montague, was instrumental in Carr's prosecution. To this list may be added Secretary Sir Ralph Winwood, who was the first to spread the news of

⁵⁶ Solve, *Stuart Politics*, p.4.

⁵⁷ Solve, *Stuart Politics*, p.73.

Overbury's murder, and Queen Anne, who was notoriously opposed to Carr and who was the most powerful figure in the faction against him.⁵⁸

Exact correlation between the characters' titles and positions in the play world and those held by Somerset's enemies might explain the play's supposed suppression, but it is the peculiarly intimate glance at the weakness of a monarch unable to disentangle the personal from the political, together with the play's demonstration of the abuse of prerogative powers that provides the play's real subversive undertones. As we have seen, the impingement of James's personal life on the affairs of state was a much criticised facet of his rule, and the dangerous conflation of personal and state politics was held responsible not only for the formation of a new English hierarchy dominated by Scots nobles and their associates, but also for extensive political corruption at court which included strategic manipulation of the law. In the eyes of many critics the figure of the King's disproportionately empowered favourite was proof of James inherent weaknesses and as such was a signifier of the malaise.

It is indeed true that the extraordinary influence wielded by Robert Carr, and later by his successor George Villiers, the Duke of Buckingham was manifest not only through the political power and the vast financial benefits that they enjoyed but also through the emotional dependence they exacted from the monarch. As living testaments to James's earthly frailty these men could be seen to pose a potentially dangerous threat to the health of the body politic and the well being of the state. The psychology of dependence which characterised the relationship between James and his favourites, and which is echoed in the subtext of *The Tragedy of Chabot*, was a state of affairs that turned Carr from a subordinate into an equal within a self-imposed

⁵⁸ Solve, *Stuart Politics*, pp. 95-96.

code of emotional exchange that operated in isolation from exterior parameters of power and status.

The timbre of this relationship between Courtier and King and the affecting power of the favourite may be assessed from the series of letters written by James to Somerset during the months prior to Somerset's trial in which the King's tone becomes progressively more distant and the growing estrangement between them more evident. While the real objective behind the royal letters are difficult to ascertain, they do reveal something of the exclusivity and intensity of the private world inhabited by James and Robert Carr. Written in early 1615 as the Overbury scandal was developing, the first of the King's letters discloses James's more recent attempts to placate his recalcitrant favourite.⁵⁹ Within a discussion of their union which includes a plaintive appeal to Carr to "consider that I am a freeman, if I were not a king (126-127)," James pleads his tolerance in the face of Somerset's desperate behaviour which had allegedly included late night visits to the royal bed chamber during which Somerset, in what James describes as a "strange frenzy (46)," would rail against James in "fiery boutades (74)." The scene the letter depicts is an intimate one in which the level of familiarity and freedom experienced by the favourite operates outside the expected social and hierarchical parameters.

Further suggestions of the King's emotional reliance on Carr are found not only in James's claims of hurt as he accuses Somerset of "long creeping back and withdrawing yourself from ly-/ing in my chamber, notwithstanding my many hundred times earnest soliciting you to the contrary (84-86)," but in the revelation that in spite of, or perhaps because of Somerset's sullenness and passionate outbursts James had previously denied a coveted place in the Privy Chamber to an ally of George Villiers,

⁵⁹ James I to Robert Carr, Earl of Somerset, 1615, *Letters of King James VI & I*, ed. by G.P.V. Akrigg (Berkeley: University of California Press, 1984), p.338. Line references from this edition are given after quotations in the text.

Sir John Graham, and had instead appointed Somerset's nephew to the post, or as Chamberlain put it in a letter to Carleton in late 1614: "when yt was expected he [Villiers] shold be made of the bed-chamber, /one Carre a bastard kinsman of the Lord Chamberlain is stept in and admitted/ to the place."⁶⁰

Couched within an appeal to Somerset to modify his behaviour together with a warning that he would not be held by fear, James also writes of the self-consuming grief that threatens to destroy him and with him the health of the commonweal as he pleads with Somerset: "Be not occasion of the hastening of his death, through /grief, who was not only your creator under god, but hath many a/ time prayed for you, which I never did for no subject alive but for /you (110-113)." James not only attests here to the intensity of feelings that his relationship with Carr had engendered, but also points to the growing political scandal and potential damage to the reputation of the monarchy which threaten as a result of his favourite's conduct:

I protest in the presence of the
Almighty God that I have borne this grief within me to the utter-
Most of my ability; and as never grief since my birth seized so
Heavily upon me, so have I borne it as long as possibly I can...
But the lightening my heart of this burden is not now the
only cause that makes me press you undelayedly to ease my grief,
for your own furious assaults of me at unseasonable hours hath
now made it known to so many that ye have been in some cross
discourse with me as there must be some exterior signs of the
amendment of your behaviour towards me. These observations
have been made and collected upon your long being with me at
unseasonable hours, loud speaking on both parts, and their ob-
servation of my sadness after your parting, and want of rest (101-104, 113-118).

Here James requests that Somerset cooperate with preserving an illusion of the inequity that by rights should characterise their personal as well as their public relationship. In translating the private to the public Somerset had the power to

⁶⁰ Chamberlain to Carleton, 24th November 1614, Akrigg, *Letters of King James VI & I*, p.340, n.

disgrace James by exposing the personal weaknesses that lie behind the façade of majesty, and the King makes a belated attempt to re-draw the parameters of his relationship with Carr and thus disentangle his emotionally volatile private life from his public and political image.

The emotional power play within the relationship between James and Robert Carr is suggestive in this long letter of some six pages, and whilst the King's pleas for reconciliation read as strikingly sincere, he nevertheless disingenuously rejects Carr's assertions of the factional politicking at court and instead professes to be ignorant of "any such court faction as ye have apprehended (3-4)" thus dismissing the real causes for Carr's discontent. Popular perception largely cohered with Quaratesi's view of events in spite of the royal denials with regard to the plotting of Carr's enemies, however, and it is this perspective that is reproduced within the political allegory in the *Tragedy of Chabot*, which arguably reflects something of the emotional intensity of the relationship between James and Carr whilst also identifying the factional manoeuvrings against Somerset with some precision.

In terms of the allegorical aspects of the play, the scholarly Sir Francis Bacon, who liaised closely with the King in the construction of the case against Somerset, and who was also instrumental in manipulating the presentation of evidence at Carr's trial, is satirised in the play world as the corrupt Chancellor Poyet.⁶¹ As head of the triumvir of judges appointed by the King, Poyet is the chief protagonist in Chabot's dishonest trial and it is he who forces the judges' signatures on the Admiral's death warrant.

⁶¹ Sir Francis Bacon, the Kings Attorney, to the King, 1615, in *Cabala, sive, Scrinia sacre*, *Mysteries of State and Government* (London: 1663) Wing / C185, 54160:26. <<http://eebo.chadwyck.com>. > [accessed 14th December 2010] (p. 33-34) Henry E. Huntington Library and Art Gallery. In this letter written to James prior to Carr's trial, Bacon writes in terms of 'weaving,' 'knitting', and 'spinning' the evidence and warns that the expectations raised of fresh (or real) evidence against Carr, which was not forthcoming, would make "things seem less than they are, because they are less than opinion." Bacon opined that a suitable steward should be found who could order the evidence, for as Bacon attested, "it is one thing to deal with a Jury of Middlesex...and another to deal with peers." See also Solve's comments in *Stuart Politics*, p.55.

The hyperbolic oratory that celebrates Poyet's learning and equitable judgement at the commencement of the trial scene contrasts sharply with the coercion in the King's name that Poyet employs to manipulate the judiciary. Chapman appears here to satirise Bacon's high-flown concept of the threat posed by language to the administration of law by suggesting the law itself as a discourse of empty rhetoric, a game of words masquerading as royal justice and one arguably that Bacon himself employed in the trial of Somerset. As Bacon had suggested in the *Advancement of Learning*, it is words that "entangle and pervert the judgement," and as Chabot tells the mendacious Poyet:

All your great law, and learning are but words,
When I plead plainly, naked truth, and deedes,
Which though you seeke to fray with state, and glory,
I'le shoote a shaft at all your globe of light,
If lightening split it, yet twas high and right (II.sig.C2r.).

Chabot here, in neostoic fashion, makes a stand for the truth of actions over words, which resonates with Aristotle's terms that the persuasive qualities of words belong to rhetoric and not to logic. In the legal sense, Chabot's statement rests on both humanistic and classical juristic authorities who privilege the concept that words are merely instruments, and so see truth as residing in things and not in words.⁶²

Robert Carr was not afforded a professional defence at his trial and was convicted on circumstantial evidence alone. The conviction was by means of a carefully crafted prosecution in which Bacon exercised all the brilliance of his formidable legal talent. From the standpoint of Carr's supporters the historical figure of Poyet must have borne a fitting resemblance to the scholarly Bacon, for it is the duplicitous Poyet, or poet, whose name Chapman tells us is "deriveth from the Greeke...from *Poyeni*,

⁶² Maclean, *Interpretation and Meaning in the Renaissance*, p.81.

which is to make, to create, to invent...(III. Sig. Er),” who is a master of the corrupt rhetoric that feeds the royal will whilst threatening the moral authority of law and the true administration of justice.

In poetic terms the false poet Poyet is analogous to the false shadow of night that brings “Worlds of confusion, where the soule defamed / the bodie had bene better neuer framed (65-66).” The name of Poyet, “whence also is the name and dignitie of *Poeta* (III.sig.E2v),” signifies a negation of *Poeta*’s dignity, a base corruption of the poetic that characterises not the divine identity of the poet lawyer, but the antithesis of the sacred poet-lawmaker. Produced in the same year as Somerset’s trial, Chapman’s republication of Homer’s *Iliads and Odysses* contains, as we have seen, a dedication to Thomas Egerton, Lord Ellesmere, which places the utmost importance on the theological significance of poesy and the links between the pious status of the ancient *vates* and that of the Lord Chancellor.⁶³ The seemingly paradoxical status of Poyet then, whose name simultaneously symbolises both the dignity of poesy and its most base corruption, may be explained through Chapman’s concept of the spiritual poetic force of *divine furor*, and its corrupting shadow, *insania*. In the same edition of the *Iliads and Odysses* in which the dedication to the Lord Chancellor appears is a proem addressed to the Earl of Somerset that explains this Ficinian theory well:

There being in Poesie a twofold rapture, (or alienation of soule, as the above said Teacher termes it) one *insania*, a disease of the mind, and a / Mere madness, by which the infected is thrust beneath all the degrees of humanitie... the other is, *Diuinus furor*... One a perfection directly infused from God; the other an infection / obliquely and degenerately proceeding from man.⁶⁴

⁶³ See Chapter 3, p.138.

⁶⁴ George Chapman, “To The most Worthily Honored, My Singular Good Lord Robert, Earle of Somerset, Lord Chamber-laine, etc,” in *Iliads and Odysses*, sig. A4v-B. (7134:190). [accessed 13th December 2010] (prefatory material to the Odyssey, sig. A3).

The name of Poyet signifies the degeneracy of *insania* and in this respect Poyet provides a metaphor for the persona of Francis Bacon, who not only stage managed the legal persecution of Somerset, but also in spite of his loyal service to the King was indicted for bribery and corruption in 1621, and thereafter suffered financial penury, disgrace, and ignominious loss of office amid widespread accusations of pederasty.⁶⁵

Five years earlier, however, before the ignominious charges of bribery secured his fall, Bacon's career was still in its ascendancy as he worked with the King in his capacity as Attorney General on the prosecution of the Somersets while he eagerly awaited the aged Ellesmere's retirement. As Robert Carr struggled to clear his name, distinct developments in the legal world in which Bacon was also deeply involved were working to seal Somerset's fate. As we have seen, the authors of the *Tragedy of Chabot* foreground the play in terms of the questions of law that relate to jurisdiction, process, ambiguity, and more specifically to the arguments surrounding the issue of the distance between the intention, or the 'spirit' of the law, and the quantifiable application of rules and regulations, or the 'letter' of the law. This difference can be characterised as that between law and equity, or between the strict application of a system of rules and its mediation and adaptation in light of individual circumstances or facts.

In the *Tragedy of Chabot's* exploration of the polarities between conscience and the legal process it reflects contemporary legal tensions regarding the rightful place of equitable judgement within the seventeenth century common law legal system, tensions that were being played out in 1616 via the disagreements between Sir Edward Coke on the one hand, and Lord Ellesmere and Sir Francis Bacon on the other, regarding the respective rights of the King's Bench and the prerogative courts.

⁶⁵ See Jardine and Stewart, "Franciscan martyr: Bribery, Buggery and the Fall of Francis Bacon," in *Hostage to Fortune*, pp. 444-469.

Traditionally characterised as the ‘conscience’ of the law, it was not equity as an essential legal principal that was in dispute but the encroachment of the discretionary courts, notably Chancery, which was the preserve of Ellesmere, on the common law jurisdiction presided over by Sir Edward Coke.⁶⁶ The ability of Chancery to meddle with cases already tried by common law judges and the practice of circumventing the courts and directly initiating cases in Chancery were seen as means to subvert legal judgement at common law. As some litigants periodically re-opened their cases in Chancery having received unfavourable judgement in the courts, the growing personal power of the Chancellor in his role as the ‘conscience’ of the King together with the perceived extension of prerogative powers that this engendered was seen by critics as an ominous threat to the common law system.⁶⁷

The disputes regarding court jurisdiction were augmented by a popular perception that the King favoured the inauguration of Civil Law like that on the continent or in Scotland, and whilst James strove to dispel this notion by means of a measured and much-publicised address to the Star Chamber in June of 1616, the anxieties regarding the encroachment of the royal prerogative on the preserves of common law were persistent.⁶⁸ Gray’s Inn barrister Timothy Tourneur summed up the concerns of some common lawyers in the portentous terms of the challenge posed to Parliament and thus to England’s ancient liberties through the power of the prerogative courts. Locating the fault in the self-interested actions of those entrusted with the Great Seal, Tourneur called for prohibition less:

...the irregular power of the Chancellors who respect nothing but their private ends should turn the common law of the land into contempt by making decrees after judgement at common law, upon causes of equity in being long before the

⁶⁶ Baker, *The Legal Profession and the Common Law*, p.229.

⁶⁷ Wilson, “The Rich Cabinet,” p.248.

⁶⁸ See Baker, *The legal Profession and the Common Law*, pp.220-29.

judgement at law contained...And this is maintained by the high power of the Chancellors who persuade the King that they are solely the instruments of his prerogative, and insinuate with the King that his prerogative is transcendent to the common law. And thus in a short time they will enthrall the common law (which yields all due prerogative), which will be such that no one will know the extent thereof. And thus the government in a little time will lie in the hands of a small number of favourites who will flatter the King to obtain their private ends, and notwithstanding the King shall be ever indigent. And if these breeding mischiefs are not redressed by Parliament the body will in a short time die in all the parts. But some say that no Parliament will be held again in England, *et tunc valeat antiqua libertas Anglie*.⁶⁹

Tourneur, like Sir Edward Coke and Sir John Holles was notably outspoken in defence of the English civil liberties inscribed within the common law. The lawyers' defences of common law jurisdictions also pertained, of course, to their own interests and positions of authority within the legal institution, which would become under severe pressure if moves towards a Civil Law system were ever to materialise.

The most celebrated antagonists of those marshalled in opposition over the issue of the prerogative and common law courts were Sir Edward Coke and Sir Francis Bacon, whose mutual dislike is well documented as not just the result of political animosity, but also of personal rivalry that included the wooing of the wealthy young widow Lady Hatton who married Edward Coke in 1598.⁷⁰ Escalating in 1616 as a result of the arguments over Chancery, the mounting animosity between Lord Ellesmere (who was backed by Bacon), and Edward Coke was threatening to cause an unprecedented crisis within the legal institution. The crafty Bacon reasoned that Coke and Ellesmere could perhaps be distracted from the battle regarding the courts' jurisdictions through their mutual involvement in the trial of Somerset. Writing to James on the 27th January with regard to the matter of the courts, Bacon attests that Ellesmere and Coke's joint effort in the prosecution of Somerset "is such a *viniculum* (bond), as they

⁶⁹ Baker, *The Legal Profession and the Common Law*, pp.221-222, citing memorandum to M.S Add.35957, f. 55v.

⁷⁰ Jardine and Stewart, *Hostage to Fortune*, p.190.

will not square while those matters are in hand, so that there is *altum silentium* (a lofty silence) of that matter.⁷¹ Whilst Bacon was later to admit that he had nursed “too reasonable thoughts” in the hope that Somerset’s trial would enjoin Ellesmere and Coke so “as they would not square at this time,” it nevertheless appears that the prosecution of Somerset was by way of a distraction from what was, at least in the eyes of Sir Francis Bacon and the King, the more serious issue of the legal wrangling over prerogative rights.⁷²

From the perspective of some of those involved, as J.H Baker demonstrates, the pressing problems of the divisions over equity and law were largely resolved when the leading protagonists in the battle left the political field. Bacon’s view was that “When the men were gone, the matter was gone.” These problems, which in Baker’s words were ones of “judicial comity and personality,” demonstrate the extent to which the personal, the judicial, and the political were inextricably entangled in the lives of those within the axis of power.⁷³ Bearing this in mind, a reading of Somerset’s conviction against the contemporaneous equity disputes of 1616 begs the question as to whether Robert Carr was in any way guilty of a crime against Overbury, or whether he was merely a convenient scapegoat for events within the culture of legal feint and counter feint that characterised the elite judicial and political milieu of 1616.

The publication of *The Tragedy of Chabot* in 1639 was at a time when public censure of prerogative powers was perhaps more widespread than it was during the second decade of James’s reign, and thus the potential criticisms of James and the

⁷¹ Jardine and Stewart, *Hostage to Fortune*, p.364, citing Francis Bacon to James, 27th January 1616 (Balfour MSS, pr. in Francis Bacon, *Letters and Life*, ed. James Spedding, 7 vols (London: Longman, Green, Longman and Roberts, 1861-74), 5, p.236).

⁷² Jardine and Stewart, *Hostage to Fortune*, p. 364, citing Francis Bacon to James 15th February 1616. LPL MS 936, art.25, in Spedding, *Francis Bacon, Life and Letters*, 5, pp. 246-8.

⁷³ Baker, *The Legal Profession and the Common Law*, p.229.

possible illusions to the Somerset affair may have been somewhat contained in the published version of the play in its capacity as historical commentary. This was obviously not the case in 1616 or indeed in 1621 when the anglicised *Tragedy of Chabot* is likely to have been first composed as closet drama. In the context of the play world Chapman, or perhaps the co-author James Shirley, has the King confess to the tyrannous influence he has on a law that entrusts the Chancellor with the King's power:

Yet twas my fault
to trust this wretch, whom I knew fierce and proud
with formes of tongue and learning (IV.416-18).

But thus am I by his malicious arts
a partly rendered, and most tyrannous spurre
to all the open course of his base envies,
A forcer of my judges, and a thirst
Of my nobilities blood, and all by one,
I trusted to make cleere my love of iustice (IV.sig. G2 r.)

This tyranny is also the tyranny of language, the tongue and learning and malicious art of the law. Voiced by none other than the King, this acknowledgment of the failure of law is further developed during the ensuing trial of the Chancellor, who comes to court in his turn after his crime against Chabot is revealed.

Dominated by the voice of the Advocate, Poyet's trial scene is framed by the legal fiction of the body politic, or more specifically the subject's internalisation of the figurative authority of King as law. In this respect, the Advocate contends with the innate difficulties produced within legal discourse by the authority of symbolic legal order, difficulties with which Chabot too has had to contend. Accused by the Treasurer, the Advocate is asked to explain his apparent hypocrisy, "the strange volubility in your tongue, or Conscience (V. sig. H2r)," that is perceived in his newly

found condemnation of the Lord Chancellor. The Advocate's recent panegyric to the Chancellor's greatness during the trial of Chabot is of course now reversed. Poyet becomes "the very fenne and Stigian abisse)" of corruption (V. sig. H2r), the proof of which is written with secret marks on his body: he was / borne with teeth in his head, by an affidavit of his Midwife, to note his devouring, and has one toe on his / left foote ... in the forme of an Eagles talon, to foretell his rapaciite (V. sig. H2r)." These proofs characterise the Chancellor as: "branded, / mark'd, and design'd in his birth for shame and obloquie (V.sig. H2r)."

Following this vehement condemnation of Poyet, the Advocate is reminded of his former fulsome description of the Chancellor as "A pious incorrupt man, a faithfull and fortunate / Servant to his King (V.sig. H2r)." The ensuing dialogue crystallises the difficulties with theoretical interpretation of lawful authority, which may be characterised as the dichotomy between the juridical dictums of "*Rex is Lex*" (the King is law) and "*Lex facit regem* (the law makes the King)." ⁷⁴ In a description that anticipates by several centuries an Orwellian concept of 'double think,' the Advocate's reply forms an explication of the symbolic rule of law to which he must adhere, a symbolic order of apparent paradox that Chapman here indicates as producing the conditions of corruption:

So every judge...hath a kinde of priviledge while he is in his state / Office and being, and although hee may *quoad se*, internally and privately be guilty of bribery of Iustice, / yet *quoad nos*, and in publike he is an upright and innocent Iudge, we are to take no notice, nay, we / deserved to suffer, if wee should detect or staine him; for in that we disparage the Office, which is the / Kings, and may be our owne, but once remov'd from his place by just dishonour of the King, he is no / more a Iudge but a common person, whom the law takes hold on, and we are then to forget what hee / hath beene, and without partialitie to strip and lay him open to the world, a counterfeit and corrupt Iudge (V.sig. H3v)."

⁷⁴ See Paul Raffield, "Contract, Classicism, and the Common-Weal," pp.75-77.

The failure of the law is here in the tacit agreement that it is the outward signs of power, the 'Office' of the judge that takes precedence over the internal realities of justice. The threat of this symbolic order is thus in the significance attached to the royal name, the prerogative which commands that the inner truth be subverted by the outward show.

This censure of law within *The Tragedy of Chabot* finds resonance in surprising sources, and ones that would perhaps have had elicited little sympathy from the play's authors. Father Garnet's stricture to the judge that "he must procede according to a iust law...even as the law whan it is vuiust is no lawe, so a judge in the execution on vniust law is no judge" is conceptually, in its emphasis on the sole authority of law as that ordered by justice, not so very far from the authors' moralistic perspective in the play. It is of course who, or what is to be the sanction for justice that is the crucial question, whether it be the King as the divine instrument of God, the Law as that derived from the 'pure reason' of God's law, or the God given human faculty of conscience, a question that is answerable only in terms of contesting individual perspectives.

These theoretical questions of law and legality are subsumed in the Advocate's conclusion in which he explains the pragmatics of legal practice in a satiric self-defence against the Treasurer's charge of hypocrisy:

As for example, hee (the corrupt judge) may and ought to flourish in his greatnesse, and breake any man's necke, with as / much facilitie as a jeast, but the case being altered, and hee downe, every subject shall be heard, a Wolfe / may be appareld in a Lambskinne; and if every man should be afraid to speake truth, nay and more than / truth, if the good of the subject which are clients sometime require it, there would be no remove of / Officers, if no remove no motions, if no motion in Court no heate, and by consequence but cold Termes; / take away this moving, this removing of Iudges, the Law may bury it selfe in Buckrum, and the kingdome / suffer for want of a due execution; and now I hope your Lordships are satisfied
(V.sig. H3.v).

Demonstrating the distance between the theoretical models of justice and the base practicalities of law, the Advocate's speech characterises the cynicism with which the law was regarded by sections of the early modern elite. Chapman and Shirley's play can be seen to engage with this cynicism, and also with the anxieties afforded by the complex and punitive world of Jacobean politics. It is generally acknowledged that in some respects the notoriety of the Somerset case could be seen to work in the King's favour. James's readiness to prosecute those so close to the crown could be construed as an indication of his impartiality in relation to matters of justice, a concept which is belied by the historical evidence, and one that is demonstrated as false by the authors of *The Tragedy of Chabot*.

The central theme of rupture within the work, which is signified first by the visual anamorphic image in which fragmentation distorts clarity of vision, and secondly in the tearing of the legal bill that prompts the shattering of the bond between the King and Chabot, also provides a metaphor for the way in which both Chabot in the play world, and Somerset in the real are "tane a peeces (V. sig. I3v)." The rupture also signifies the rupture within law, the division between a theoretical concept of the 'spirit' of the law, and law's enactment in a world in which legality is wrested to the 'policy' of the crown. These themes of dissection and fragmentation are especially germane to the events of 1616 – 1621 but are also significant for a later date, and the publication of the play in 1639 appears to have provided a timely comment on the preoccupations of a later generation equally concerned with the questions of law, legality, meaning, and truth with which the play engages.

Conclusion

As a system of retributive justice, law sanctions society's moral codes, the tenets of which are reconstructed in the popular imagination through a variety of means, and, significantly, as I have argued throughout this thesis, through artistic and literary representation. Richard Posner describes law as, in one sense, "crystallised public opinion."¹ In other words, individuals subject to the concerns of their own historical moment enforce law, and so it is inevitably linked to the constructs of morality within the society in which it operates. As my thesis demonstrates, in the arena of the educated classes the bearing on the imaginative construction of morality is not so much that of public opinion, but of the interpretive hegemony of a small, intellectually engaged literate class – a class dominated by lawyers, who lived and worked within an environment unique in its creative force.

As defining characteristics of the age, the polarities of religious conviction and the politicisation of Church and State inevitably work to structure the way in which moral codes are conceived. Reading popular ideas of morality through the lens of the law, however, recovers a complex ethics and enables a differently nuanced focus on moral imagining and literature's place within it. The hypothesis that English law was natural law applied to everyday life validated the ethical status of the early modern legal system.² This idealistic supposition belies the intricacies of the exchange between society's moral codes and their sanction in law. Literature demonstrates how the contingencies of the law are at odds with law's imagined lofty status as a distillation of

¹ Richard A. Posner, *Law and Literature*, rev and enl. ed. (Cambridge Massachusetts: Harvard University Press, 1998), p.95.

² Cromartie, "The Constitutionalist Revolution," p.82.

divine law, or a universal science. This emerges in a real sense in relation to the way in which lawyers wrote and thought about criminal acts. As the study of rape crime in Chapter 1 shows, the moral ideologies of law are in tension with the conceptual ordering of rape as felony. A detailed analysis provides a means to gauge this tension in relation to the multiple pressures that bore on it. My investigation shows that this conflation of terms between the spiritual and the secular translates into multiple societal contexts, and underwrites the questioning by Roman Catholics about the authority of the secular common law courts to try crimes of faith, and, too, the efforts of Protestants to find the spiritual parallels between law and the inward trial of the self.

I have found, as lawyers themselves acknowledged, that the landscape of early modern law is full of obscure horizons and circuitous trails. This has deterred any assumption that legal signification ‘reflects’ a stable ideological or moral understanding, or, indeed, mirrors any integrated practice in the courts. The fluidity of jurisdictional boundaries in the period is matched by the differences in lawyers’ own legal perspectives – not only in relation to the business of the courts, but also in terms of the way in which law itself is made.

The *post-nati* debates and the issue of Calvin’s Case bring specific focus to these differences. Calvin’s case was considered unique, although it had had a rather dubious precedent in the case of W.D., the Scotsman brought before the Queens Bench for rape in 1571. The court’s refusal on that occasion to grant W.D. the status of alien, and thus a hearing by a special jury comprising Scots and English jurors, would seem to have settled the matter, and the case was cited on several occasions to support Anglo-Scottish union.³ Calvin’s case was, however, closely argued. Although Ellesmere, Bacon, and Coke were in agreement in terms of the desired outcome of Calvin’s case, their ideas in

³ Levine, “A More than Ordinary Case of ‘Rape,’” pp.159-160.

respect to legal reasoning were not.⁴ Edwin Sandys suggested that when custom and law could find no answer to a case then it should be settled according to the terms understood by laymen as the law of nations, *ius gentium*.⁵ This was Ellesmere's understanding, and Ellesmere also acknowledged that the law evolves through judge made law, or the judicial interpretation of the case in hand. Bacon and Coke opined to the contrary. For Coke, it seems, Ellesmere's position was dangerously close to admitting that lay thinking could equal that of lawyerly reasoning.⁶ As we have seen, Coke alleged that legal solutions lie, not in the reasoning of even the wisest man unstudied in law, but only in the fining and refining of the immemorial, unchanging '*optima regula*' of the historical past.⁷ As recorded in the jurisdictional debates over Chancery in Chapter 4, Coke makes a case for the supremacy of the seasoned arguments of lawyers, who, he implies, reason in relation to their knowledge of the absolute and irreproachable system of common law. The varying ideas of these eminent lawyers on such fundamental issues points to the wealth of different understandings that the practice of early modern law represents, and to the politics that underpin them. These differences are highlighted by lawyers' writing on sexual crime, in which a uniform perfunctoriness suggests an ostensible clarity in the law's terms, but also shows, for example in the writing of Lambarde and Edgar, a discomforted recognition of the ambivalence that the law's absolute terms represent.

Recovering then the imaginings of morality through the unfixed "Hydra head" of law – a discursive metaphor that Subha Mukerji identifies as evoking the peculiar ambiguity and flexibility attached to early modern practice – suggests that the potential for pursuing only one of the Hydra's many manifestations to the detriment of others is

⁴ For the following discussion I am indebted to Kim, "Calvin's case (1608)," pp. 154-164, and Cromartie, "The Constitutionalist Revolution," pp. 87-88.

⁵ Cromartie, "The Constitutionalist Revolution," p. 87.

⁶ Cromartie, "The Constitutionalist Revolution," p. 87.

⁷ Kim, "Calvin's case (1608), p.161. Cromartie, "The Constitutionalist Revolution," p.88.

ever present.⁸ This difficulty is well recognised by legal scholars. As historians, we are most attracted to the great lawyers of the past, notably Bacon and Coke. As K. Kim argues, these lawyers habitual reference to historical texts finds obvious concurrence in the interests of historians (and literary scholars too), and their popularity can result in a potential neglect of other lawyers who often receive comparatively little attention.

Lorna Hutson, who emphasizes the way in which many of the insights in Plowden's Commentaries have been lost in Kantorowitz's celebrated and selective reading of Plowden, raises this same issue in a different context. Hutson suggests that for scholars of a later age the concept of the *corpus mysticism* and the metaphor of the 'King's two bodies' becomes inflated. Not just one among several models of early modern constitutional imagining, but a formulating schema in early modern thought.⁹

The work of these critics is a reminder of the range of possibilities that legal discourse provides and of the hermeneutic richness that attaches to them. Indeed, I have found that the many inscriptions of law in the texts of early modern writers that I have studied are marked by diversity, and thus a claim that there exists a normative model of how legal signification 'works' to encode morality in the national psyche is unwise. The picture that emerges is of literary engagements with law and its moral meanings on numerous levels, both formal and informal, which offer a deeply versatile language with which early modern individuals interrogate law's ideological, institutional, and religious significance. This engagement demonstrates something of the peculiarly prominent and lively relation with law that is maintained by the early modern society – a society in which law in all its shades of meaning exercised the imaginations of both lawyers and the lay community alike.

⁸ Mukherji, *Law and Representation in Early Modern Drama*, p.233.

⁹ Hutson, "Not the King's Two Bodies," pp.166-98.

In professional circles, legal writers sought to rationalise the cumbersome measures in which the early modern law was imbued – measures, as Mukerji points out, that were a far cry from the perfect science or *vera philosophia* of the humanist imaginary.¹⁰ Bearing on these early attempts to clarify the early modern common legal system, attempts which were impressively led by Sir Edward Coke, but seeded in earlier efforts of lawyers like Abraham Fraunce, and the original compiler of *The Lawes*, there emerges the sense of a developing concern with the fixing and codifying of meaning. In moments when social and moral structures were under particular scrutiny this project equally became the focus of creative writers. In the works of these authors the politically and morally explicit connotations which I have identified throughout this thesis encode the preoccupation with meanings and justification that was taking place across the literary / legal spectrum.

Masque culture, in its concern with validation and rationalisation, is as much a part of this undertaking as the satirists attempts to de-mythologise cultural pretensions; so too are the fable trial narratives that employ the framework of argumentation and judgement to contest hierarchical structures and the moral terms under which they operate. Representational complexity is a defining feature of many of these texts. The masques, like the classical rape narratives, absorb multi-layered symbolic forms that are weighed with moral signification and political resonance. Providing an alternative moral landscape that can either symbolically reinforce or elide a strictly doctrinal hermeneutics of morality, the Platonist pluralities of the masques sanction political constructions of a perceived normative order.

The sense of setting the moral compass overlays the curious blend of polemic and panegyric that flowed from the presses during the early decades of the seventeenth

¹⁰ Mukherji, *Law and Representation in Early Modern Drama*, p.234.

century. This writing responds to the complex anxieties produced in a changing world immured in a precarious system of largesse and favour and grounded in an uncertain moral terrain. As such, it is a testament to the textual negotiations of the paradoxical moral principals produced by the personalised style of Jacobean rule. A key example, as we have seen, is Chapman and Shirly's *Tragedy of Chabot*, which locates the corruption of the spiritual ideals of law and kingship in the unfixed margins between the public and private selves of the monarch.

Writers in this period were, of course, also frequently driven by the pragmatic need for patronage, and by the pressures of changing political circumstances and the necessity to maintain intricate lines of allegiance, irrespective of how they were taxed by political, religious, or ideological beliefs. In an attempt to unravel the variables of the moralistic and ideological foundations of writers' work there are no easy solutions to be found to the conundrum of exactly which criteria is most in play. What does emerge is that enfolded in the fascination with meaning and truth that permeates early seventeenth century literature is a prevailing concern with boundaries – those between the personal and the political, the legal and illegal, and the licit and illicit – and a prevailing sense of the expansion of a distinctly legalistic culture.

The gradual ascendancy of the common law during the mid sixteenth century and on in to the years of Jacobean rule is undoubtedly a contributing factor in the cultural probing of the legal and moral limitations and freedoms of the political stage. Revisionist historians support a thesis that the intellectual fervour induced by the rise of the common law was a key factor in producing a fundamental and enduring shift in political thought.¹¹ Literature contributed to this ferment, and was inseparable from it. The quality of art to expose and translate the ideological and communal operations of

¹¹ See particularly Cromartie, "The Constitutionalist Revolution," p.76.

law and society, and the cultural codes that underpin them, is one uniquely exploited by the writers of the sixteenth and seventeenth centuries. As my thesis demonstrates, this literary output shared with the law a project of moral imagining both multifarious and enduring – an indissoluble relation that helped shape the cultural order and define the age.

Bibliography

Primary sources

Aeschylus, *Aeschylus I: Oresteia*, ed. by Richard Lattimore (Chicago: Chicago University Press, (1953)

Agrippa, Henrie Cornelius, *Cornelius Agrippa, of the vanitie and vncertainty of artes and sciences*, Englished by Ia. San. Gent. (London: Henry Wykes, 1569)

————— *De occulta philosophia libri tres* (Basle, 1533)

Anon, *The bloody dovnfall of adultery. murder, ambition at the end of which are added Westons, and Mistris Turners last teares, shed for the murder of Sir Thomas Ouerbury poysoned in the Tower; who for the fact, suffered deserued execution at Tiburne the 14. of Nouember last. 1615* (London: R. H[iggenbotham], 1615)

Anon, *Cabala, sive, Scrinia sacre , Mysteries of State and Government* (London: G. Bedell and T. Collins, 1663)

Aristotle, *Aristotle in 23 Volumes*, trans. by H. Rackham (London: Heinemann, 1934)

Augustine, *The City of God Against the Pagans*, by St. Augustine, Bishop of Hippo, trans. by G.E. McCracken (Cambridge: Harvard University Press, 1957)

Bacon, Francis, *Of The Advancement and Proficience of Learning of the Partitions of Sciences IX Bookes. Written in Latin by the most eminent illustrious & famous Lord Francis Bacon Baron of Verulam Vicont St Alban Counsilour of Estate and Lord Chancellor of England. Interpreted by Gilbert Wats*, ([London]: Rob:Young; [Oxford]: Ed. Forrest, 1640)

————— *The tvvoo bookes of Francis Bacon Of the proficience and aduancement of learning, diuine and humane* (London: Henrie Tomes, 1605)

————— *Francis Bacon, Letters and Life*, ed. by James Spedding, 7 vols (London: Longman, Green, Longman and Roberts, 1861-74)

————— “*Sir Francis Bacon, the Kings Attorney, to the King,*”1615, in *Cabala, sive, Scrinia sacre*, pp.33-34

Bastard, Thomas, *Chrestoleros Seu en bookes of epigrammes written by T B.* (London: I[ohn] B[roome]1598)

Bernard, Richard, *The Isle of Man: Legal Proceeding in Man-shire against SIN, Wherein, by way of a continued allegory, the chief Malefactors disturbing both Church and Commonwealth, are Detected and Attached; with their Arraignment and Judicial Trial, according to the Laws of England* (London: Nathaniel Ranew, 1659)

The Bible, King James version.

Campion, Thomas, *Works by T. Campion*, ed. by Percival Vivian (Oxford, Clarendon Press, 1909)

————— “The Discription of A Maske,” in Davis ed., *The Works of Thomas Campion; Complete Songs, Masques, and Treatises with a Selection of the Latin Verse*, pp. 207-228

Chapman, George, “Hymnus in Noctem” in *Skia nyktos, The shadowv of night containing two poeticall hymnes deuised by G.C. Gent* (London: Ponsonby, 1594)

————— *Seauen bookes of the Iliades of Homere, prince of poets, translated according to the Greeke, in iudgement of his best commentaries by George Chapman Gent* (London: Iohn Windet, 1598)

————— *Achilles shield translated as the other seuen bookes of Homer, out of his eighteenth booke of Iliades. By George Chapman Gent* (London: Iohn Windet, 1598)

————— *Homer prince of poets: translated according to the Greeke, in twelue bookes of his Iliads, by Geo: Chapman* (London: Samuel Macham, [1609])

————— *Andromeda liberata. Or the nuptials of Perseus and Andromeda. By George Chapman* (London: Laurence L'Isle, 1614)

————— *Andromeda liberata* (1614) *Literature Online*, <<http://lion.chadwyck.co.uk>

————— *Homer's Odysses. Translated according to the Greeke by, Geo: Chapman* (London: Nathaniell Butter, 1615)

————— *The whole works of Homer: prince of poets in his Iliads, and Odysses. Translated according to the Greeke, by Geo: Chapman* (Nathaniell Butter, 1616)

————— *A Free and Offenceles Justification*, (London: Laurence L'Isle, 1614)

Chapman, George and James Shirley, *The Tragedie of Chabot Admirall of France as it vvas presented by her Majesties Servants, at the private House in Drury Lane. Written by George Chapman, and Iames Shirly* (London: Andrew Croke and William Cooke, 1639)

Chaucer, Geoffrey “The Legend of Good Women,” *The Complete Works of Geoffrey Chaucer*, ed. by W.W.Skeat, 2nd edn, 4 vols (Oxford: Oxford University Press, 1900) in *The Online Medieval and Classical Library*, <http://omacl.org>

Coke, Edward, *The Third Part of the Institutes of the laws of England: concerning high treason, and other pleas of the crown, and criminall cases. Authore Edw. Coke milite, I.C. MDCXLVIII* (London: W. Lee, 1648)

————— *The first part of the Institutes of the lawes of England. Or, A commentarie vpon Littleton* (London: Societie of Stationers, 1628)

————— *The twelfth part of the Reports of Edward Coke, Kt, of divers resolutions and judgements given upon solumn arguments, and with great deliberation and conference with the learned judges in cases of law* (London: Henry Twyford, and Thomas Dring, 1656)

Coote, Edmund, *The English School-Master Teaching all his scholars, of what age soever, the most easie, short, and perfect order of distinct Reading, and true Writing our English-tongue, that hath ever yet been known or published by any* (London: Company of Stationers, 1670)

Dalton, Michael, *The countrey iustice containing the practise of the iustices of the peace out of their sessions* (London: Societie of Stationers, 1619)

Daniel, Samuel, *The Vision of the Twelve Goddesses* in Rees, ed., *A Book of Masques In Honour of Allardyce Nicoll*, pp.17-42

Davies, John, *Wittes pilgrimage, (by poetical essaies) through a vworld of amorous sonnets, soule-passions, and other passages, diuine, philosophicall, morall, poetically, and political. By Iohn Dauies* (London: John Browne, 1605)

Digges, Leonard, *A geometrical practice, named Pantometria* (London: Henrie Bynneman, 1571)

Doddridge, John, *The Lavvyers Light: Or A due direction for the study of the Law for methode* (London: Beniamin Fisher, 1629)

Drayton, Michael, *The Owle* (London: E. White and N. Ling, 1604)

Dugdale, William, *Origines Juridicales or, Historical memorials of the English Laws* (London: Abel Roper, John Martin, and Henry Herringman, 1671)

————— “Description of Christmas at the Inner Temple,” in Bland ed., *Three Revels from the Inns of Court*, pp. 116-122

England and Wales, *The statutes at large conteyning all such acts which at any time heretofore haue beene extant in print from Magna Charta, vntill the sixteenth yeere of the raigne of our most gracious soueraigne lord Iames* (London: Bonham Norton and Iohn Bill, 1618)

Edgar, Thomas, *The lavves resolutions of womens rights: or, The lavves prouision for woemen* (London: Iohn More, 1632)

- Finch, Henry, *Lavy, or, a discourse thereof in foure bookes. Written in French by Sir Henrie Finch Knight, his Maiesties Serieant at Law. And done into English by the same author* (London: Society of Stationers, 1627)
- Fortescue, Sir John, *A learned commendation of the politike lawes of England (De Laudibus Legum Anglae)*, trans. by Robert Mulcaster (London: Thomas Wight, and Bonham Norton, 1599)
- Fraunce, Abraham, *The Lawiers Logike, exemplifying the praecepts of logike by the practice of the common Lawe* (London: William How, 1588)
- Garnet, Henry, preface to *A Treatise of Equivocation* (1595), ed. by David Jardine (London: Longman, Brown, Green, and Longman, 1851)
- Goddard, William, "A MORRALL SATIRE, Intituled the Owles araynement," in *A Satirycall dialogue or a sharplye-invective conference, betweene Allexander the great, truelye woman-hater Diogynes*, (London: 1616)
- Gower, John, *The English Works of John Gower ed. by G.C. Macaulay* (London: Kegan Paul, Trench, Trubner, 1900-1901)
- Guilpin, Edward (Everard), *Skiaetheia. Or, A shadowe of truth, in certaine Epigrams and Satyres*, (London: I[ohn] B[roome], 1598)
- Hale, Matthew, *The History of the Common Law of England*, ed. by Charles M. Gray (Chicago: University of Chicago Press, 1971)
- Harington, Sir John, *Tract on the Succession to the Crown*, ed. by Clements R. Markham (London: 1880)
- *Letters and Epigrams*, ed. N.E McClure, Philadelphia, University of Philadelphia Press, 1930)
- Herring, Francis, *Popish Piety, or The first part of the historie of that horrible and barbarous conspiracie, commonly called the powder-treason nefariously plotted against Iames King of great Britaine, Prince Henrie, and the whole state of that realme assembled in Parliament; and happily dis[ou]lered, disappointed, and frustrated by the powerfull and sole arme of the Almightye, the fifthe of nouember, anno 1605* (London : William Ione[s], 1610)
- Holdsworth, William, Sir, *The History of English Law*, 17 vols (London: Methuen & Co, 1903-1966)
- Holinshed, Raphael, *The first and second volumes of Chronicles* (London: Henry Denham, 1587)
- James I, *The workes of the most high and mightie prince, Iames*, (London: Iames, Bishop of Winton, 1620)
- *Basilikon doron, Devided into three bookes* (Edinburgh: Robert Walde-

graue, 1599)

————— *Irenicus Philodikaios, A Treatise DECLARING AND confirming against al obiections the just title and right of the moste excellent and worthie Prince, Iames the sixt, King of Scotland, to the succession of the croun of England*, (Edinburgh: R. Waldegrave, 1599)

————— “TO HENRY MY DEAREST SONNE, and naturall successor,” in *Basilikon doron, Or His Maiesties Instructions to his dearest sonne, Henry the prince* (London: Company of Stationers, 1603)

————— *Letters of King James VI & I* ed. by G.P.V. Akrigg (Berkeley: University of California Press, 1984)

Lambarde, William, *Eirenarcha: or Of the office of the Justice of peace in four bookes* (London: Thomas Wight, and Bonham Norton, 1599)

La Primaudaye, Pierre de, *The French academie wherin is discoursed the institution of maners, and whatsoeuer els concerneth the good and happie life of all estates and callings, by precepts of doctrine, and examples of the liues of ancient sages and famous men: by Peter de la Primaudaye Esquire, Lord of the said place, and of Barree, one of the ordinarie gentlemen of the Kings Chamber: dedicated to the most Christian King Henrie the third, and newly translated into English by T.B.* (London: G. Bishop and Ralph Newbery, 1586)

Legh, Gerard, *The Accedens of Armory* (London: Richard Tottill, 1562)

Linche, Richard, *The Fountain of Ancient Fiction* (London: Adam Islip, 1599)

Luther, Martin, *Luther's Works*, ed. by Jaroslav Pelikan and Helmut T. Lehmann, 55 vols (Philadelphia: Concordia and Fortress Press, 1958-85)

Machyn, Henry, *The Diary of Henry Machyn Citizen and Merchant-Taylor of London from A.D 1550 to A.D. 1563* ed. by J.G. Nichols (London: J.B. Nichols & Son, 1848)

Niccols, Richard, *The Cuckow*, (London: W. C[otton], 1607)

Oldmixon, John, *The History of England during the Reigns of the Royal House of Stuart* (London: John Pemberton, 1730)

Ovid, *All Ouids elegies 3. bookes. By C.M. Epigrams by I.D* (London: 1603)

————— *The fiteene bookes of P. Ouidius Naso; entituled, Metamorphosis*, ed. by Arthur Golding (London: Thomas Purfoot, 1612)

————— *The heroycall epistles of ... Publius Ouidius Naso, in English verse tr. G. Turberuile with A. Sabinus aunsweres* (London: Henrie Denham, 1567)

————— *Ovid's Metamorphoses in fifteen books Translated by the most Eminent hands*, trans. by John Dryden and others (London: Jacob Tonson, 1717)

Peele, George, *Tale of Troy* in Prouty ed., *The Life and Minor Works of John Peel*, by David H. Horne, pp.183-202

Puttenham, George, *The Arte of English Poesie* (London: Richard Field, 1589)

Quintilian, Marcus, *The declamations of Quintilian being an exercitation or praxis upon his XII books concerning the institution of an orator*, trans. by John Warr (London: John Taylor, 1686)

Rabelais, Francois, *Le Tiers Livre des faicts et dicts heroique du bon Pantagruel* (1546)

Rich, Barnabe, *The famous history of Herodotus Conteyning the discourse of diverse countreys* (London: Thomas Marshe, 1584)

Sackville, Thomas and Thomas Norton, *The Tragidie of Ferrex and Porrex set forth without any addition or alteration but altogether as the same was shewed on stage before the Queenes Maiestie, about nine years past, vz. The xviiij. day of Ianuarie. 1561. by the gentlemen of the Inner Temple.* . (London: Iohn Daye, 1570)

Shakespeare, William, *Julius Caesar*, in Greenblatt and others eds., *The Norton Shakespeare*, pp. 1533-1589

————— *Troilus and Cressida* in Greenblatt and others eds., *The Norton Shakespeare*, pp. 1835-1911

————— *The Rape of Lucrece* in Greenblatt and others eds., *The Norton Shakespeare*, pp. 641-682

————— *Measure for Measure* in Greenblatt and others eds., *The Norton Shakespeare*, pp. 2029-2089

Sidney, Sir Philip, *Defence of Poetry*, ed. by Lewis Soens (Lincoln: University of Nebraska Press, 1970)

————— *Defence of Poesy* (1595) in M.H. Abrams ed., *The Norton Anthology of English Literature*, I. pp. 479-500

Spenser, Edmund, "A letter of the Authors," in *The faerie queene Disposed into twelue books, fashioning XII. Morall virtues* (London: William Ponsonbie, 1590)

————— *The Faerie Queen* in Abrams, ed., *The Norton Anthology of English Literature*, I. pp. 514-734

Stanley, Thomas, *Aischylou tragodiai epta Aeschlyli tragoediae septem: cum scholiis Graecis omnibus: deperditorum dramatum fragmentis / versione & commentario Thomae Staneii* (London: Cornelius Bee, 1663)

Terence, *Terens in englysh* (Paris : P. le Noir?, ca. 1520)

Tuke, Thomas, *A treatise against paintng(sic) and tincturing of men and women against murther and poisoning: pride and ambition: adulterie and witchcraft* (London: Edward Merchant, 1616)

United Kingdom Crown Prosecution Service, *Pre-trial witness Interviews: Code of practice*, by Ken Macdonald QC, Director of Public Prosecutions, (February 2008)

Vicars, John, *Mischeefes mysterie: or, Treasons master-peece, the Powder-plot Inuented by hellish malice, preuented by heauenly mercy: truely related. And from the Latine of the learned and reuerend Doctour Herring translated, and very much dilated. By Iohn Vicars* (London: E. Griffen, 1617)

Warr, John, "Translator to the Reader," in *The declamations of Quintilian* (London: 1686)

Waterhous, Edward, *Fortescutus Illustratus, or A Commentary on that nervous treatise, De Laudibus Legum Anglae written by Sir John Fortescue, Knight ... by Edward Waterhous, Esquire* (London: Thomas Dicas, 1663)

Weldon, Anthony, Sir, *The court and character of King James. Written and taken by Sir A:W., being an eye and eare witness. Published by Authority* (London: John Wright, 1650)

Wilkinson, Robert, *The merchant royall A sermon preached at White-hall before the Kings M. at the nuptialls of the Right Honourable the Lord Hay and his Lady, vpon the twelfe day last being Ianuar .6. 1607* (Edinburgh: Finlason, 1607)

Wilson, Arthur, *The history of Great Britain being the life and reign of King James the First, relating to what passed from his first access to the crown, till his death / by Arthur Wilson* (London: Richard Lownds, 1653)

Secondary sources

Abrams, M.H., ed., *The Norton Anthology of English Literature*, 6th edn, 2 vols (New York: Norton, 1993)

Allen, Michael J.B., and Valery Rees with Martin Davies, eds., *Marsilio Ficino: His Theology, His Philosophy, His Legacy* (Leiden: Brill, 2001)

Almog, Shulamit, "Creating Representations of Justice in the Third Millennium: Legal Poetics in Digital Times," *Rutgers Computer and Technology Law Journal*, 32.2 (2006), 183-245

Archer, Elisabeth, Jane, and others, eds., *The Intellectual and Cultural World of the Early Modern Inns of Court* (Manchester: Manchester University Press, 2011)

- Axton, Marie, "Robert Dudley and the Inner Temple Revels," *The Historical Journal*, 13.3 (1970), 365-378
- Baines, Barbara J. *Representing Rape in the Early Modern Period*, Mellen Studies in Literature: Jacobean Drama, 106 (Lewiston, NY: Mellen Press, 2003)
- "Effacing Rape in Early Modern Representation," *English Literary History*, 65 (1998), 69-98
- Baker, J. H "The Third University, 1450-1550: Law School or Finishing School? " The Intellectual and Cultural World of the Early Modern Inns of Court. Conf. Courtauld Institute, London. 14-16 Sept. 2006
- "Why the History of English Law Has Not Been Finished," *Cambridge Law Journal*, 59.1(2000), 62-84
- *An Introduction to English Legal History*, 3rd edn (London: Butterworths, 1990)
- *The Legal Profession and The Common Law: Historical Essays* (London: Hambledon Press, 1986)
- ed., *Legal Records and the Historian: Papers Presented to the Cambridge Legal Conference* (London: Historical Society, 1978)
- Baron, Jane B., "Law, Literature, and the Problems of Interdisciplinarity," *The Yale Law Journal*, 108.5 (1999), 1059-1085
- Bashar, Nazife, "Rape in England between 1550 and 1700," *The Sexual Dynamics of History: Men's Power, Women's Resistance*, The London Feminist History Group (London: Pluto Press, 1983)
- Bellany, Alastair, *The Politics of Court Scandal in Early Modern England: News Culture and the Overbury Affair, 1603-1660* (Cambridge: Cambridge University Press, 2002)
- Bevington, David, and Peter Holbrook, eds., *The Politics of the Stuart Court Masque* (Cambridge: Cambridge University Press, 1998)
- Bland, D.S., ed., *Three Revels from the Inns of Court* (Amersham: Avery, 1984)
- Botsford, Polly, "Early Warnings," *Law Society Gazette*, 28 March 2008
- Bouwsma, William J., "Lawyers and Early Modern Culture," *The American Historical Review*, 78.2 (1973), 303-327
- Boyd White, J., *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Boston and Toronto: Little, Brown & Co, 1973)
- Brownmiller, Susan, *Against Our Will: Men, Women and Rape* (London: Secker and Warburg, 1975)

- Bryson, Norman "Two Narratives of Rape in the Visual Arts: Lucretia and the Sabine Women," in Tomaselli and Porter, eds., *Rape*, pp. 152-173
- Butler, Martin and David Lindley, "Restoring Astraea: Jonson's Masque for the Fall of Somerset," *ELH*, 61.4 (1994), 807-827
- Castor, Grahame, *Pleiade Poetics : A Study in Sixteenth-Century thought and Terminology* (Cambridge: Cambridge University Press, 1964)
- Clucas, Stephen, " ' To rauish and refine and earthly soul': Ficino and the Poetry of George Chapman," in Allen ed., *Marsilio Ficino: His Theology, His Philosophy, His Legacy*, pp.419-442
- Cockburn, J.S., "Early Modern Assize Records as Historical Evidence," *Journal of the Society of Archivists*, 5.4 (1975), 215-231
- Colclough, David, "Verse Libels and the Epideictic Tradition in Early Stuart England," *Huntington Library Quarterly*, 69.1 (2006), 15-30
- Cogswell, Thomas, and others, eds., *Politics, Religion, and Popularity in Early Stuart Britain: Essays in Honour of Conrad Russell* (Cambridge: Cambridge University Press, 2002)
- Conway Davies, J., ed., *Catalogue of Manuscripts in the Library of The Honourable Society of The Inner Temple*, 3 vols (London: Oxford University Press, 1972)
- Cooper, Tarnya, "The Queen's Visual Presence," in Doran ed., *Elizabeth: The Exhibition at the National Maritime Museum*, pp. 175-181
- Cormack, Bradin, *A Power to Do Justice: Jurisdiction, English literature, and the Rise of the Common Law, 1509-1625* (Chicago: University of Chicago Press, 2007)
- Cover, Robert M., "Violence and the Word," *Yale Law Journal*, 95.8 (1986), 1601-1630
- Crino, Anna, Maria, "Il Processo a Lord e Lady Somerset per L'Assaissinio di Sir Thomas Overbury Nelle Relazioni di Francesco Quaratesi e di Pompilio Gaetani," *English Miscellany* 8 (1957) 261
- Cromartie, Alan, "The Constitutionalist Revolution: The Transformation of Political Culture in Early Stuart England," *Past & Present*, 163 (1999), 76-120
- Cuddy, Neil, "Anglo-Scottish Union and the Court of James 1, 1603-1625," *Transactions of the Royal Historical Society*, 5th Ser., 39 (1989), 107-124
- Cummings, Brian, "Conscience and the law in Thomas More," *Renaissance Studies*, 23.4 (2009), 463-485
- Curran, Kevin, "Erotic Policy: King James, Thomas Campion, and the Rhetoric of

- Anglo-Scottish Marriage,” *Journal for Early Modern Cultural Studies*, 7.1 (2007), 55-77
- Davis, Stevie, *The Idea of Woman in Renaissance Literature*, (Brighton: Harvester, 1986)
- Davis, Walter, R., ed., *The Works of Thomas Campion: Complete Songs, Masques, and Treatises with a Selection of the Latin Verse* (New York: Doubleday, 1967)
- Dollimore, Jonathan and Alan Sinfield, eds., *Political Shakespeare: Essays in Cultural Materialism* 2nd edn (Manchester: Manchester University Press, (1994)
- Dollimore, Jonathan, “Shakespeare, cultural materialism and the new historicism,” in Dollimore and Sinfield eds., *Political Shakespeare*, pp. 2-17
- Donaldson, Ian, *The Rapes of Lucretia: A Myth and its Transformations* (Oxford: Clarendon Press, 1982)
- Doran, Susan, ed., *Elizabeth: The Exhibition at the National Maritime Museum* (London: Chatto & Windus, 2003)
- “Juno versus Diana: The Treatment of Elizabeth I’s Marriage in Plays and Entertainments, 1561-1581,” *The Historical Journal*, 38.2 (1995) 257-274
- Douzinis, Costas and Adam Geary, *Critical Jurisprudence: the Political Philosophy of Justice* (Oxford, Portland, Oregon: Hart Publishing, 2005)
- Dyer, Claire, “Criminal justice revolution to secure more convictions: Plan for prosecutors to interview witnesses before trial will end ancient rule,” *The Guardian*, 11 November 2005
- Eckhardt, Joshua, “Love-song weeds, and Satyrique thornes”: Anti-Courtly Love Poetry and Somerset Libels,” *Huntington Library Quarterly*, 69.1 (2006), pp. 47- 66
- Emmison, F.G., *Elizabethan Life: Morals & the Church Court*, Essex Record Office Publications, 63 (Chelmsford: Essex Record Office, 1973)
- Faivre, Antoine, *The Eternal Hermes: From Greek God to Alchemical Magus*, trans. by Joscelyn Godwin (Grand Rapids, MI, USA: Phanes Press, 1995)
- Ferguson, Francis “Rape and Rise of the Novel,” *Representations*, 20 (1987), 88-112
- Ferrell, Lori Anne, “The Sacred, the Profane, and the Union: Politics of Sermon and Masque at the Court Wedding of Lord and Lady Hay,” in Cogswell and others eds., *Politics, Religion, and Popularity in Early Stuart Britain: Essays in Honour of Conrad Russell*, pp. 45-64
- Finklepearl, Philip J., *John Marston of the Middle Temple: An Elizabethan Dramatist in His Social Setting* (Cambridge, Massachusetts: Harvard University Press, 1969)

- Galloway, Andrew "Chaucers Legend of Lucrece and the Critique of Ideology in Fourteenth Century England," *English Literary History*, 60.4 (1993), 813-832
- Girouard, Mark, "The Architecture of the Halls of the Inns of Court," The Early Modern Inns of Court, Conf. Courtauld Institute, London. 14-16th Sept. 2006
- Goodrich, Peter, "Screening Law," *Law and Literature*, 21.1 (2009), 1-23
- "Officium Poetae," *Liverpool Law Review*, 23.2 (2001), 139-152
- *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis* (Basingstoke, 1987)
- "Poor Illiterate Reason: History, Nationalism and the Common Law," *Social and Legal Studies* 1 (1992), 7-28
- Graves, Michael A.R., *Thomas Norton: The Parliament Man* (Oxford: Blackwell, 1994)
- Greenblatt, Stephen, and others, eds, *The Norton Shakespeare* (New York: W.W. Norton, 1997)
- Hackett, Helen, *Women and Romance Fiction in the English Renaissance* (Cambridge: Cambridge University Press, 2000)
- Hadfield, Andrew, "Spenser, Drayton, and the Question of Britain," in *Review of English Studies, New Series*, 51.204 (2000), 582-599
- Hanafin, Patrick, Adam Geary, Joseph Brooker, "Introduction: On Writing: Law and Literature," *Journal of Law and Society*, 31.1 (2004), 1-2
- Hardison, O.B., Jr., *The Enduring Monument: A Study of the Idea of Praise in Renaissance Literary Theory and Practice* (Chapel Hill: North Carolina Press, 1962)
- Henderson, Paula, "The Evolution of the Gardens of the Inns of Court," The Early Modern Inns of Court, conf. Courtauld Institute, London. 2006
- Herrup, Cynthia, "Law and Morality in Seventeenth Century England," *Past and Present*, 106.1 (1985), 102-123
- Hodges, Elizabeth Perry, "Writing in a Different Voice *Colloquy: Human Voice in Legal Discourse*," *Texas Law Review*, 66 (1987-1998), 629-640
- Holbrook, Peter, "Jacobean masques and the Jacobean peace," in Bevington and Holbrook eds., *The Politics of the Stuart Court Masque*, pp. 67-87
- Horne, David H. *The Life and Minor Works of John Peele* ed. by Charles Tyler Prouty, 2 vols (New Haven: Yale University Press, 1952)
- Hornstein, Lillian Herlands, "Some Chaucer Illusions by Sir Edward Coke," *MLN*, 60. 7 (1945), 483-486

Hudson, Hoyt H., "John Hepwith's Spenserian Satire upon Buckingham: With some Jacobean Analogues," *The Huntington Library Bulletin*, 6 (1934), 39-71

Hutson, Lorna, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: Oxford University Press, 2007)

——— "Rethinking the Spectacle of the Scaffold: Juridical Epistemologies and English Revenge Tragedy," *Representations*, 89 (Winter, 2005), 30-58

——— "Not the King's Two Bodies: Reading the "Body Politic in Shakespeare's Henry IV, Parts 1 and 2," in Hutson and Kahn eds., *Rhetoric and Law*, pp.166-98

Hutson, Lorna, and Victoria Kahn, eds., *Rhetoric and Law in Early Modern Europe* (New Haven: Yale University Press, 2001)

James, Mervyn, *English Politics and the Concept of Honour: 1485-1642*, Past and Present supplements, 3 (Oxford: Past and Present Society, 1978)

Jardine, Lisa, and Alan Stewart, *Hostage to Fortune: The Troubled Life of Francis Bacon* (London: Victor Gollancz, 1998)

Jardine, Lisa, and Anthony Grafton, "'Studied for Action': How Gabriel Harvey Read his Livy," *Past & Present*, 129 (1990), 30-78

Jed, Stephanie H., *Chaste Thinking: The Rape of Lucrece and the Birth of Humanism* (Bloomington: University of Indiana Press, 1989)

Kantorowicz, Ernst, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957)

Kezar, Dennis, ed., *Solon and Thespis: Law and Theater in the English Renaissance* (Notre Dame, Indiana: University of Notre Dame Press, 2007)

Kim, Keechang, "Calvin's Case (1608) and the law of Alien status," *The Journal of Legal History*, 17.2 (1996), 155-171

Kraye, Jill "Moral Philosophy," in Schmitt and Skinner ed., *The Cambridge History of Renaissance Philosophy*, pp. 303-386

Leclerc, Ivor, *The Nature of Physical Existence*, Muirhead Library of Philosophy Series (London: Allen and Unwin, 1972)

Levack, Brian P., *The Formation of the British State: England, Scotland, and the Union 1603-1707* (Oxford: Oxford University Press, 1987)

Levine, Mortimer, "A More Than Ordinary Case of 'Rape', 13 and 14 Elizabeth I," *The American Journal of Legal History*, 7.2 (1963), 159-164

Lindley, David, *The Trials of Frances Howard: Fact and Fiction at the Court of King James* (London: Routledge, 1996)

——— “Campion’s “Lord Hay’s Masque” and Anglo-Scottish Union,” *The Huntington Library Quarterly*, 43.1 (1979), 1-11

——— “Who Paid for Campion’s “Lord Hay’s Masque”?” *Notes and Queries*, 26.2 (1979), 144-145

Laiou, Angeliki E., ed., *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies* (Washington D.C.: Dumbarton Oaks Research Library and Collection, 1993)

MacColl, Alan, “The construction of England as a Protestant ‘British’ nation in the sixteenth century,” *Renaissance Studies*, 18.4. (2004), 582-608

Mack Peter, *Elizabethan Rhetoric: Theory and Practice* (United Kingdom: Cambridge University Press, 2002)

Maclean, Ian, *Interpretation and Meaning in the Renaissance: The Case of Law* (Cambridge: Cambridge University Press, 1992)

Malloch, A.E., and Frank L. Huntley, “Some Notes on Equivocation,” *PMLA*, 81.1 (1996), 145 –146

Marx, Steven, “Shakespeare’s Pacifism,” *Renaissance Quarterly*, 45.1 (1992), 49-95

Maus, Katherine Eisaman, introduction to *Julius Caesar* in Greenblatt ed., *The Norton Shakespeare*, pp. 1525-1532

——— introduction to *Titus Andronicus* in Greenblatt ed., *The Norton Shakespeare*, pp. 372-373

——— introduction to *Measure for Measure* in Greenblatt ed., *The Norton Shakespeare*, pp. 2025-2027

McCrea, Adriana, *Constant Minds: Political Virtue and the Lipsian Paradigm in England, 1584-1650* (Toronto: University of Toronto Press, 1977)

Mcdonald, A.M., ed., *Chambers Twentieth Century Dictionary* (Edinburgh: Chambers, (1972)

Moses, Diana C., “Livy’s Lucretia and the Validity of Coerced Consent in Roman Law,” in Laiou, ed., *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, pp.39-81

Mukherji, Subha, *Law and Representation in Early Modern Drama* (Cambridge: Cambridge University Press, 2006)

Murphy, Katherine, “Jesuits and Philosophasters: Robert Burton’s Response to the Gunpowder Plot,” *Journal of the Northern Renaissance* 1.1 (2009) 109-128

Nelson, Alan H., and John R. Elliot Jr., *Records of early English Drama: Inns of Court,*

- 3 vols (Cambridge: D.S. Brewer, 2011)
- Norbrook, David, *Poetry and Politics in the English Renaissance*, rev.edn (Oxford: Oxford University Press, 2002)
- Notestein, Wallace, *The Winning of the Initiative by the House of Commons* (London: British Academy, 1924)
- Pearcy, Lee T., *The Mediated Muse: English Translations of Ovid 1560-1700* (Connecticut: Archon, 1970)
- Peck, Linda Levy, *Court patronage and corruption in early Stuart England* (Boston: Unwin Hyman, 1990)
- *Northampton: Patronage and Policy at the Court of James I* (London: George Allen & Unwin, 1982)
- Peters, Julie Stone, "Law Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," *PMLA*, 120 (January 2005), 442-453
- Philadelphoff-Puren, Nina, and Peter Rush, "Fatal (F)laws: Law Literature and Writing," *Law and Critique*, 14.2 (2003), 191-211
- Porter, Roy, "Rape — Does it have a Historical Meaning?" in Tomaselli and Porter eds., *Rape*, pp. 216-223
- Posner, Richard A., *Law and Literature: A Misunderstood Relation* (Cambridge Massachusetts: Harvard University Press, 1988)
- *Law and Literature*, rev. and enl. edn (Cambridge Massachusetts: Harvard University Press, 1998)
- Post, J.B., "Ravishment of Women and The Statutes of Westminster," in Baker ed., *Legal Records and the Historian: Papers Presented to the Cambridge Legal Conference*, pp.150-164
- "Sir Thomas West and the Statutes of Rape, 1382," *Historical Research*, 53. 127 (1980), 24-30
- Prest, W.R., "Law and Women's Rights in Early Modern England," *The Seventeenth Century*, 6 (1991), 169-187
- *Lawyers in Early Modern Europe and America* (London: Croom Helm, 1981)
- *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640* (London: Longman, 1972)
- Priorreschi, Phinio, "Supernatural Elements in Hippocratic Medicine," *Journal of the History of Medicine and Allied Sciences*, 47.4 (1992), 389-404

- Purkiss, Diane, *The Witch in History* (London: Routledge, 1996)
- *Three Tragedies by Renaissance Women* (London: Penguin, 1998)
- Raffield, Paul, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558-1660* (Cambridge: Cambridge University Press, 2004)
- “Contract, Classicism, and the Common-Weal: Coke’s Reports and the Foundations of the Modern English Constitution,” *Law and Literature*, 17.1 (2005), 69-96
- “Rhetoric, Religion, and Education at the Elizabethan Inns of Court,” *The Early Modern Inns of Court. Conf. Courthauld Institute, London. 14-16th Sept. 2006*
- Rees, Joan, ed., *A Book of Masques In Honour of Allardyce Nicoll* (Cambridge: Cambridge University Press, 1970)
- Rees, Valery, “Ficino’s Advice to Princes,” in Allen and others eds., *Marsilio Ficino: His Theology, His Philosophy, His Legacy*, pp. 339-358
- Ribner, Irving, “The Meaning of Chapman’s ‘Tragedy of Chabot,’” *The Modern Language Review*, 55.3 (1960), 321-331
- Rider, Claire, and Celia Charlton, “The Inns of Court in Context,” *The Early Modern Inns of Court, conf. Courtauld Institute, London. 2006*
- Rock, Paul, *The Social World of an English Crown Court* (Oxford: Clarendon Press, 1993)
- Rudolph, Julia, “Rape and Resistance: Women and Consent in Seventeenth Century English Legal and Political Thought,” *The Journal of British Studies*, 39.2 (2000), 157-184
- Russell, Conrad, “Parliamentary History in Perspective, 1604-1629,” *History* 61.201, (1976), 1-27
- Sanderson, James L., “Poems on an Affair of State—The Marriage of Somerset and Lady Essex,” *The Review of English Studies, New Series*, 17.65 (1996), 57-61
- Sarat, Austin, editorial, *Law, Culture and the Humanities*, 5.1 (2009), 1-2
- Scheppele, Kim Lane, “Facing Facts in Legal Interpretation,” *Representations*, 30 (1990), 42-77
- Schmitt, Charles B., and Quentin Skinner ed., *The Cambridge History of Renaissance Philosophy* (Cambridge: Cambridge University Press, 1998)
- Seznec, Jean, *The Survival of the Pagan Gods: the Mythological Tradition and Its Place in Renaissance Humanism and Art*, trans. by Barbara F. Sessions, Harper

- Torchbooks / The Bollingen Library, 2004 (New York: Harper & Row, 1961, c1953)
- Sharpe, J.A., *Crime in Early Modern England 1550-1750* (London: Longman, 1999)
- “The History of Crime in late medieval and early modern England: A review of the field,” *Social History*, 7.2 (1982), 187-203
- Shuger, Debora, “Paper Bullets: Texts, Lies and Censorship in Early Modern England,” in Kezar, ed., *Solon and Thespis*, pp. 163-196
- Snow, Vernon F., “Essex and the Aristocratic Opposition to the Early Stuarts,” *The Journal of Modern History*, 32.3 (1960), 224-233
- Solve, Norma Dobie, *Stuart Politics in Chapman’s Tragedy of Chabot* (Ann Arbor: University of Michigan Press, 1929)
- Stenton, Doris Mary, *The English Woman in History*, 2nd edn (New York: Schocken Books, 1977)
- Stocker, Margarita, *Judith Sexual Warrior: Women and Power in Western Culture* (New Haven: Yale University Press, 1998)
- Stone, Lawrence, “Social Mobility in England 1500-1550,” *Past & Present*, 33.1 (1996), 16-35
- Stretton, Tim, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998)
- Tatlock, John S.P., “The Siege of Troy in Elizabethan Literature, Especially in Shakespeare and Heywood,” *PMLA*, 30.4 (1915), 673-770
- Temkin, Jennifer, “Prosecuting and Defending Rape: Perspectives From the Bar,” *Journal Of Law and Society*, Vol. 27.2 (2000), 219-248
- Tomaselli, Sylvana and Roy Porter, eds., *Rape* (Oxford: Blackwell, 1986)
- Tucker, E.F.T., “Ruggle’s Ignoramus and Humanistic Criticism of the Language of the Common Law,” *Renaissance Quarterly*, 30.3 (1977), 341-350
- Wallace, David, ed., *The Cambridge History of Medieval Literature* (Cambridge: Cambridge University Press, 1999)
- Ward, Ian, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995)
- Watt, Diane, *Amoral Gower, Language Sex, and Politics* (Minneapolis: University of Minnesota Press, 2003)
- “Literary genealogy, virile rhetoric, and John Gower’s Confessio Amantis,” *Philological Quarterly*, 78 (1999), 389-415

- Welsford, Enid, *The Court Masque: A Study in the Relationship Between Poetry and The Revels* (New York: Russell & Russell, 1962)
- West, M.L., *Immortal Helen* (London: Bedford College, 1975)
- West, Robin, *Narrative, Authority, and Law* (Michigan: University of Michigan Press, 1993)
- Wetherbee, Winthrop "John Gower" in Wallace ed., *The Cambridge History of Medieval Literature*, pp. 589-609
- White, R.S., *Natural Law in English Renaissance Literature* (Cambridge: Cambridge University Press, 1996)
- Williams, C.H., "A Fifteenth Century Lawsuit," *Law Quarterly Review*, 40 (1924), 354-364
- Willson, David, Harris, *King James VI and I* (London: Cape, 1956)
- Wilson, Luke, *Theaters of Intention: drama and the law in early modern England*, (Stanford: Stanford University Press, 2000)
- "The Rich Cabinet: Bacon, Chapman, and the Culture of Corruption," in Kezar ed., *Solon and Thespis*, pp. 218-263
- Wilson, Nigel, ed., *Encyclopaedia of Ancient Greece* (New York: Routledge, 2006)
- Wind, Edgar, *Pagan Mysteries in the Renaissance* (London: Faber & Faber, 1958)
- Winston, Jessica, "Forming a Professional Community: Lyric Poetry at the Early Elizabethan Inns of Court", *The Intellectual and Cultural World of the Early Modern Inns of Court*. Conf. Courtauld Institute, London. 14-16th Sept. 2006
- "Seneca in early Elizabethan England," *Renaissance Quarterly*, 59.1. (2006), 29-88
- Wormald, Jenny, "Gunpowder Treason and Scots," *The Journal of British Studies*, 24.2 (1985), 141-168
- Yates, Frances A. *Ideas and Ideals in the North European Renaissance: Collected Essays*, ed. by J.N. Hillgarth and J.B. Trapp, 3 vols (London: Routledge & Kegan Paul, 1982-1984), III (1983)
- *Renaissance and Reform: The Italian Contribution, Collected Essays*, ed. by J.N. Hillgarth and J.B. Trapp, 3 vols (London: Routledge & Kegan Paul, 1982-1984) II (1983)
- "Shakespeare and the Platonic Tradition," in *Renaissance and Reform: The Italian Contribution*, II, pp. 151-160

————— *The French Academies of the Sixteenth Century* (London: The Warburg Institute, University of London, 1947; repr. Nendeln, Liechtenstein: Kraus-Thomson, 1968)

World Wide Web

Beidler, Peter G., *Backgrounds to Chaucer, ORB: the Online Reference Book for Medieval Studies* (2001) < <http://www.the-orb.net/textbooks/anthology/beidler/rape.html> >

Drob, Sanford L., “The Doctrine of *Coincidenta Oppositorum* in Jewish Mysticism,” (2000) < www.NewKabbalah.com >

Fennell, Lee Ann “Scarcity of Choice in Law and Literature,” (2000), 1-9
<<http://people.virginia.edu/~dll2k/fennell2.pdf> >

Manderson, Desmond, McGill Shakespeare Moot, McGill University, Shakespeare Moot Court < <http://www.mcgill.ca/shakespearemoot> >

Moglen, Eben, “Legal Fictions and the Common Law legal theory: Some Historical Reflections,” *10 Tel-Aviv Univ. Stud. in L.*, 35 (1991)
<<http://emoglen.law.columbia.edu/publications/fict.html> >

Norrie, Alan, “ ‘Criminal Law,’ *The Critical Lawyers’ Handbook*,” Vol. 1. ed. by Ian Grigg-Spall and Paddy Ireland <http://www.nclg.org.uk/book1/2_6.htm>

Perseus Digital Library Project, ed., by Gregory R. Crane, Tufts University
< <http://www.perseus.tufts.edu/> >